

# FINLAND

Disclaimer: The national thematic studies were commissioned as background material for the comparative report on *Access to justice in Europe: an overview of challenges and opportunities* by the European Union Agency for Fundamental Rights (FRA). The views expressed in the summaries compiled from the national thematic studies do not necessarily reflect the views or the official position of the FRA. These summaries are made publicly available for information purposes only and do not constitute legal advice or legal opinion. They have not been edited.

## Contents

1.	National court system .....	1
2.	Restrictions regarding access to justice .....	7
3.	Length of judicial proceedings .....	7
4.	Are procedures concluded within a reasonable time? .....	8
5.	Does provision exist for speedy resolution of particular cases? .....	8
6.	Is it possible to waive the right of access to a judicial body? .....	9
7.	Access to non-judicial procedures .....	9
8.	Legal aid .....	15
9.	Forms of satisfaction available to a vindicated party .....	17
10.	Adequacy of compensation .....	17
11.	Rules relating to the payment of legal costs .....	17
12.	Rules on burden of proof .....	18

## 1. National court system

### General courts

In Finland, there are general courts of law and general courts of administrative law. The Supreme Court, the Courts of Appeal and the District Courts are the general courts of law and the Supreme Administrative Court and the Regional Administrative Courts are the general courts of administrative law.<sup>1</sup>

The general courts of law consist of district courts as the courts of first instance, Courts of Appeal as the appellate courts and the Supreme Court as the highest appellate court.<sup>2</sup> District courts are the courts of first instance.<sup>3</sup> The district of a district court is constituted by one or several

---

<sup>1</sup> The Finnish Constitution, Section 98.

<sup>2</sup> Code of Judicial Procedure [*oikeudenkäymiskaari/rättegångs balk* (4/1734), as amended], Chapter 1, Section 1.

<sup>3</sup> Code of Judicial Procedure, Chapter 1, Section 1.

municipalities.<sup>4</sup> The Finnish district courts deal with criminal cases, civil cases and petitionary matters.

A district court is headed by the chief judge and other judges are the district judges. In ordinary civil cases the court consists of three professional judges. One single judge presides over the pre-trial procedure of a civil case. In simple cases decisions can be made by notaries who are training at the court and by trained office staff. In serious criminal cases the district court can have lay judges, that is in criminal cases, where sanction is more than two years in prison. In such cases, the composition of the court is one presiding lawyer judge and three lay judges. Minor criminal cases are tried by one judge alone, who can also be a training judge that is a notary.<sup>5</sup> The cases are decided either in a session where the parties are summoned to or in chambers where decision is based on documents.<sup>6</sup>

The decisions by district courts can normally be appealed in the Court of Appeal.<sup>7</sup> However, there is the so-called filtering procedure. According to this procedure, the Court of Appeal first makes a decision whether an appeal shall be taken into further consideration. Under Section 2 in Chapter 26 of the Code of Judicial Procedure, which entered into force on 01.10.2003, the examination of the appeal shall not continue if the court unanimously decides that it seems to be evident that there is no ground to hold an oral hearing in the case; a decision of the court of first instance nor the procedure therein is deficient; and the judicial protection of any party of the case does not, taken into consideration the nature of the case, require consideration of the appeal.

In the future, there may also be other restrictions on preparation, as Government Bill 105/2009 was submitted to Parliament in June 2009. According to the proposal, the current filtering procedure would be replaced by a new system of permission to further consideration of the case by the appellate court. Permission would be required if a case has an appellate value less than EUR 10,000. An appellate value is defined as the difference between the value of the claim presented in an appeal petition and that included in the first instance judgment. However, permission should be granted if there is a reason to doubt the correctness of the decision of the first instance court; it is important for other similar cases; or there are other weighty reasons. Permission would, however, not be required only for reassessing the evidence, if there is no

---

<sup>4</sup> Code of Judicial Procedure, Chapter 3, Section 1.

<sup>5</sup> Code of Judicial Procedure, Chapter 1, Section 2, District Court Act [*kärjäoikeuslaki/ tingsrättslag* (581/1993)], Sections 4, 16 and 19.

<sup>6</sup> Code of Judicial Procedure, Chapter 3, Section 2.

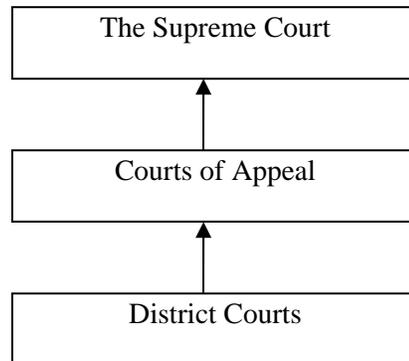
<sup>7</sup> Information in English on the appeal system can be found in P. Haapaniemi (2009) 'Appeal of Civil Litigation in Finland – Appeal in Transition', in: L. Ervo (ed.) *Civil Justice in Finland*, Jigakusha, pp. 169–209.

<sup>8</sup> The Finnish Constitution, Section 98.

reason to doubt the correctness of the decision of the first instance court in this regard unless it is not possible to evaluate its correctness without first granting permission.<sup>8</sup>

The decisions of the Court of Appeal can be appealed in the Supreme Court if the Supreme Court grants leave to appeal.

Table 1: System of general courts in Finland



#### Administrative courts

Administrative courts include regional administrative courts and the Supreme Administrative Court of Finland.

Administrative courts deal mainly with appeals against the decisions of various public authorities. Administrative courts deal also with administrative litigation and certain other tasks statutorily assigned to them. Administrative litigation refers to a case involving a public-law obligation or right that cannot be settled by means of a unilateral decision of an authority. Administrative litigation is initiated by petition. Administrative litigation can concern, for instance, recovery of subsidies or organising of or the expenses for health services. It is to be noted that the Administrative Court of Helsinki has exclusive competence over matters of asylum.

According to Section 4 of the Administrative Judicial Procedure Act (586/1996), an administrative decision may be challenged by an appeal. Any measure by which a case has been

---

<sup>8</sup> Government Bill HE 105/2009 vp muutoksenhakua käräjäoikeudesta koskevaksi lainsäädännöksi/RP 105/2009 rd med förslag till lagstiftning om fullföljd av talan från tingsrätt. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2009/20090105.pdf> (13.10.2009).

resolved or dismissed may be challenged by an appeal. However, an internal administrative order concerning the performance of a duty or another measure shall not be subject to appeal.<sup>9</sup>

Appeals against decisions by state authorities are called ‘administrative appeals’ and most appeals against decisions by local authorities ‘municipal appeals’. A person whom the decision concerns has standing to appeal. In many statutes, party status has been specifically defined in the text of the legislation. Also an authority may be a party. Everyone domiciled in a municipality has standing to file a municipal appeal, regardless of whether the decision affects him or her. There are certain decisions of local authorities, such as construction control officers or social welfare authorities that can be appealed against only by way of administrative appeal.

However, some restrictions to the right to appeal exist in administrative acts and they have sometimes been seen as problematic from the international and constitutional point of view.<sup>10</sup> If the decision concerns the rights mentioned above the possible restrictions to appeal should be interpreted as far as possible in such a way as to achieve compliance with the Constitution and international human rights treaties binding upon Finland. If there is ‘evident’ conflict between the Constitution and a provision of an Act of Parliament, a court is obliged to give priority to the Constitution under Section 106 of the Constitution.

The decisions of the administrative court can be appealed in the Supreme Administrative Court. Normally, a party discontent with the decision may appeal against it to the Supreme Administrative Court. However, in certain types of matter an appeal ban is in effect, in which case there is no appeal to the Supreme Administrative Court. Such a ban applies, *e.g.*, to parking ticket matters and certain social welfare matters.<sup>11</sup>

In certain types of matter, appeal to the Supreme Administrative Court depends on leave. In this event, the Supreme Administrative Court hears and decides the appeal only if it first grants leave to appeal. The request for leave to appeal may appear in the same document as the appeal itself. Leave to appeal is required especially in tax matters and many social welfare matters.<sup>12</sup>

---

<sup>9</sup> Administrative Judicial Procedure Act, Section 5.

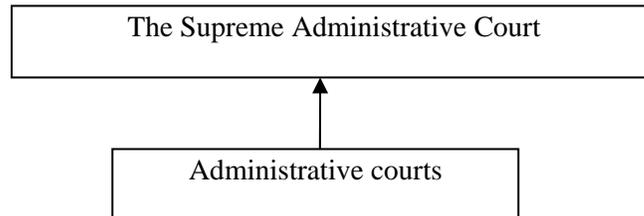
<sup>10</sup> See, *e.g.*, J. Husa (2008), ‘Korkeimmasta hallinto-oikeudesta’, in: *Defensor Legis*, No. 4, p. 722.

<sup>11</sup> This study does not cover the Finnish administrative proceedings as a whole and therefore, only examples are given in the text. The other questions are not relevant in this connection.

<sup>12</sup> This study does not cover the Finnish administrative proceedings as a whole and therefore, only examples are given in the text. The other questions are not relevant in this connection.

A reform of administrative jurisdiction is currently under consideration. With this reform the right to appeal to the Supreme Administrative Court will probably become much more limited as the attempt is to widen the system of the leave to appeal.<sup>13</sup>

Table 2: System of administrative courts in Finland



### Special courts

These courts are the Insurance Court and the National Discrimination Tribunal of Finland.

The Insurance Court has jurisdiction in certain matters of social insurance, such as accident insurance, employment pensions, civil service pensions and national pensions. Before the Insurance Court is seized, an appeal against an insurance decision must normally be lodged with a revision board; the decisions of the boards are actionable in the Insurance Court. With the exception of certain accident insurance cases, the Insurance Court is the final instance, whose decisions cannot be appealed against.

The National Discrimination Tribunal is an independent tribunal promoting legal protection in the area of prohibition of discrimination. The Tribunal may only examine cases of discrimination based on ethnic origin, except those involving supervision of the prohibition of discrimination in employment and public service. Decision by the Tribunal has the same legal effect as a judgment by a general court of law.<sup>14</sup> The two limitations in the mandate of the Tribunal are that it may not investigate a case, which has been or is to be taken up by another authority, such as a district court, and it does not have the competence to change the decisions of other authorities. Public authorities may request a statement from the Tribunal on the application of the Non-Discrimination Act in cases of ethnic discrimination other than in employment or service relations. Decisions of the National Discrimination Tribunal may be appealed to the

<sup>13</sup> Hallintolainkäytön kehittämistarpeita. Näkökohtia lainvalmistelun pohjaksi (Oikeusministeriön julkaisu 2006:4). Available at: <http://www.om.fi/1149508970154> (13.10.2009). A committee is currently drafting the proposal. It is impossible to estimate the results in detail.

<sup>14</sup> More information on the National Discrimination Tribunal of Finland is available in Finnish, Swedish and English at: <http://www.intermin.fi/sltk> (13.10.2009).

Administrative Court of the judicial district of which the person allegedly discriminated against resides.<sup>15</sup>

### Specialised non-judicial institutions

The Non-Discrimination Act provides that the Occupational Safety and Health Authorities supervises the compliance with the terms of the Non-Discrimination Act in employment relationships and service relationship governed by public law and in traineeships and other comparable activities at the workplace. The scope of competence of the Occupational Safety and Health Authorities covers all grounds of discrimination mentioned in the Non-Discrimination Act.

The Ombudsman for Minorities is an independent authority entrusted with the task of supervising compliance with the prohibition of ethnic discrimination under the Non-Discrimination Act. This Ombudsman aims to prevent ethnic discrimination and promote equality in a number of different ways. She/he also intervenes in discrimination by issuing statements and opinions. The most important mode of operation for the Ombudsman for Minorities is to facilitate adjustment between parties. There is no comprehensive data collection on these actions.<sup>16</sup>

Aside from these specialised institutions in the field of discrimination, the role of the Parliamentary Ombudsman — as well as two Deputy-Ombudsmen also acting independently and with the same authority as the Ombudsman — deserves to be mentioned. The Parliamentary Ombudsman exercises oversight to ensure that public authorities and officials observe the law and fulfil their duties in the discharge of their functions. In addition to authorities and officials, the scope of oversight includes other parties performing public functions. The Parliamentary Ombudsman is obliged to pay special attention to the implementation of constitutional rights and human rights by virtue of Section 109 of the Constitution of Finland and, therefore, her mandate includes the observance of national standards and practices relating to access to justice, discrimination and free movement of persons.<sup>17</sup>

---

<sup>15</sup> Finland/21/2001 (14.10.2008).

<sup>16</sup> More information about the Ombudsman for Minorities is available in Finnish, Swedish and English at: <http://www.vahemmistovaltuutettu.fi/> (13.10.2009).

<sup>17</sup> The Constitution of Finland (731/999) is available in English at: <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731> (13.10.2009).

## 2. Restrictions regarding access to justice

According to the Non-Discrimination Act, actions must be instituted at a court of law at the plaintiff's domicile, within two years of the infringement or, if the infringement has been continuous, within two years of its cessation. In cases relating to employee recruitment, however, action must be instituted within one year of the date on which the jobseeker discriminated against receives notification of the recruitment decision.

## 3. Length of judicial proceedings

Excessive length of proceeding constitutes one of the most persistent and serious problems of the current Finnish judicial system. Between 01.01.2000 – 31.12.2008 the European Court of Human Rights gave 44 judgments against Finland for length of domestic judicial proceedings. Moreover, by the end of August 2009, the Court has already delivered 12 similar decisions. To remedy these difficulties, the Finnish Parliament adopted the Act on the Compensation for Excessively Long Trial Proceedings.<sup>18</sup> It entered into force on 01.01.2010 and awards damages for parties to the excessively long trials. The law is applicable to civil and criminal proceedings and petitions in ordinary courts but not to administrative proceedings or proceedings in special courts.

However, despite the bad record in terms of lengthy judicial proceedings, on the average Finnish courts tend to decide cases in a timely manner. It should also be noted, that problems related to excessive length of domestic proceedings do not seem to apply to *acquis* relevant for this study. For example, in five Supreme Administrative Court cases re. discrimination *acquis*,<sup>19</sup> the total length of proceedings has remained between 1.5 and 2.5 years, including both the first instance as well as appellate level of proceedings. The proceedings in the first instance lasted approximately eight months. This corresponds to the generally available statistical data on average length of proceedings in administrative courts. According to annual report 2008 of the Finnish Administrative Courts, the proceedings in the administrative courts lasted between 8.1 months (2002) and 9.7 months (2007) during the period of review from 2002 to 2008. During the same

---

<sup>18</sup> Government Bill HE 233/2008 vp laiksi oikeudenkäynnin viivästymisen hyvittämisestä ja eräksi siihen liittyviksi laeiksi/RP 233/2008 med förslag till lag om gottgörelse för dröjsmål vid rättegång och till vissa lagar som har samband med den. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2008/20080233> (13.10.2009).

<sup>19</sup> See Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/KHO 2006:93, KHO 2006:98, KHO 2007:4, KHO 2008:8, KHO 2008:30. Available in Finnish at: <http://www.finlex.fi/fi/oikeus/kho/> (13.10.2009).

period, proceedings in the Supreme Administrative Court lasted from 9.8 (2007) to 11.9 months (2004). Furthermore, based on a general survey on the decisions of the National Discrimination Tribunal of Finland given between 2007 and 2008, the proceedings in the Tribunal tend to take approximately 1.5 years. Hence, taken as a whole and based on limited information, there does not appear to be excessive delays in the area of *acquis* pertaining to discrimination. This estimation is also supported by the fact that of all the above mentioned length of proceedings cases found against Finland by the ECtHR, only one included arguments based on prohibition of discrimination as enshrined in Article 14 of the ECHR, thus making the case to fall under *acquis* relevant for this study.<sup>20</sup> However, even in that case, the ECtHR rejected those claims.

#### 4. Are procedures concluded within a reasonable time?

On the average Finnish courts tend to decide cases in a timely manner. Because no available evidence suggests that length of proceedings in discrimination *acquis* cases deviates from the average length of judicial proceedings in Finland, it is considered that the procedures are concluded within a reasonable time in Finland.

#### 5. Does provision exist for speedy resolution of particular cases?

The requirement of speedy resolution of cases is provided already by Section 21 of the Finnish Constitution, which guarantees everyone a right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Similar requirement of speedy procedures is also included in Section 23 of the Administrative Procedure Act (434/2003), which requires matters to be considered without undue delay.

---

<sup>20</sup> *Vilho Eskelinen and others v. Finland* (19.04.2007). Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=820651&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (13.10.2009).

Furthermore, the new law on the compensation for the excessive length of proceedings entered into force on 01.01.2010. At the same time, the Code of Judicial Procedure was amended introducing a new Chapter 19 on the speedy resolution of particular cases. According to the new provisions, the district court may, after receiving a petition from a party, decide that based on certain urgent and weighty reasons, the case will be handled following an expedited procedure. As for the law on the compensation for excessive length of proceedings, it provides for a maximum compensation of EUR 10,000 for unduly delayed proceedings in civil, criminal and petitionary matters. Moreover, a similar reform concerning administrative proceedings is in preparation at the Ministry of Justice.

Although the new legislation has enhanced the status of the right to timely resolution of disputes, certain problem areas still exist. The decision for speedy resolution covers only district courts but not the appeal procedure even though it is the appeals stage where the bulk of proceedings generally lays. There is also a risk that while the compensatory mechanisms ensure that those whose rights for timely resolution have been violated receive a monetary satisfaction for that violation, this piecemeal approach will not solve the structural problems in the Finnish court system, which causes the delays in the first place.

## 6. Is it possible to waive the right of access to a judicial body?

Waiving of the right of access to judicial process is possible, but there exist institutional protections to prevent individuals from undermining their rights to redress.

## 7. Access to non-judicial procedures

Aside from courts and tribunals, there exist 'alternative' (non-judicial) means of dispute resolution concerning discrimination cases.

In employment relationships and service relationships, in traineeships and other comparable activities at the workplace, supervision is carried out by the Occupational Safety and Health Authorities. Moreover, the prohibition of discrimination other than in employment relationships and service relationships governed by public law is supervised by the Ombudsman for Minorities and the National Discrimination Tribunal. A person who considers himself or herself to have

been the victim of discrimination may seek guidance, advice, recommendations and conciliation from the Ombudsman for Minorities. A similar system of supervision is guaranteed in the Act on Equality between Women and Men. The Equality Ombudsman and the Equality Board are the supervisory bodies.

The Occupational Safety and Health Authorities are civil servants subject to the Ministry of Social Affairs and Health. The statutory task of the Occupational Safety and Health Authorities to supervise the prohibition of discrimination in employment relationships is enacted in the Non-Discrimination Act: ‘Compliance with the terms of this Act in employment relationships and service relationships governed by public law, and in traineeships and other comparable activities at the workplace, shall be supervised by the Occupational Safety and Health Authorities.’<sup>21</sup> The scope of application of the prohibition of discrimination supervised by the Occupational Safety and Health Authorities includes recruitment conditions, employment and working conditions as well as personnel training and promotion.

The mandate of the Occupational Safety and Health Authorities covers not only the supervision of the prohibition on discrimination based on ethnic origin — as is the case with the Ombudsman for Minorities and the National Discrimination Tribunal — but also all the other grounds laid out in the Non-Discrimination Act, namely age, nationality, language, religion, belief, opinion, health, disability, sexual orientation and other personal characteristics.<sup>22</sup>

The supervision of compliance with the prohibition of discrimination provided in the Non-Discrimination Act is not the only supervision task of the Occupational Safety and Health Authorities. In addition, they have a statutory task of supervising the prohibition of work discrimination provided in the Penal Code.<sup>23</sup> The Act on the Supervision of Occupational Safety and Health and Appeal in Occupational Safety and Health Matters provides that, if probable cause exists to suspect that an offence punishable under the work discrimination provision of the Penal Code has been committed, the Occupational Safety and Health Authority is obligated to report the case to the public prosecutor — providing that it is not a significantly minor offence.<sup>24</sup>

The Non-Discrimination Act provides that in matters of discrimination the Occupational Safety and Health Authorities are empowered:

---

<sup>21</sup> Finland/21/2004 (14.11.2008).

<sup>22</sup> Finland/21/2004 (14.11.2008).

<sup>23</sup> Finland/39/1889 (01.07.2005).

<sup>24</sup> Finland/44/2006 (21.12.2007).

- To issue appropriate instructions for remedying any omissions or faults that employers are liable to remedy or eliminate.

- To order employers to take the measures referred to above under the threat of a fine or under the threat that the neglected obligation will be performed by another at the expense of the employer, that work at the workplace or a part of it will be interrupted, or that use of the equipment or working method will be prevented.

The Office of the Ombudsman for Minorities is an independent authority administratively affiliated with the Ministry of the Interior. The legal basis for the post of Ombudsman for Minorities is provided in the Act on the Ombudsman for Minorities and the National Discrimination Tribunal of Finland.<sup>25</sup> The Act provides that the field of operations of the Ombudsman is the prevention of ethnic discrimination and the promotion of good ethnic relations; the improvement of the position and rights of foreigners and ethnic minorities; the supervision of compliance with the principle of ethnic non-discrimination. The statutory functions of the Ombudsman in this determinate field of operations are also specified in the Act on the Ombudsman for Minorities and the National Discrimination Tribunal.

The statutory tasks of the Ombudsman are:

- To supervise compliance with the Non-Discrimination Act.<sup>26</sup>
- To promote good ethnic relations in Finnish society.
- To follow and improve the position and rights of foreigners and ethnic minorities.
- To conduct or commission independent surveys pertaining to ethnic discrimination.
- To report on the realisation of equality and on the conditions and standing of ethnic groups.
- To submit initiatives to eradicate discriminatory practices and injustices.
- To disseminate information on ethnic discrimination and legislation pertaining to ethnic minorities and foreigners.
- To perform the tasks assigned to the Ombudsman in the Aliens Act.<sup>27</sup>

---

<sup>25</sup> Finland/660/2001 (30.12.2008).

<sup>26</sup> Finland/21/2004 (14.11.2008).

<sup>27</sup> Finland/301/2004 (08.08.2008).

- To perform as a national rapporteur for trafficking.
- To supervise the realisation of equal treatment of everyone regardless of their ethnic origin in tandem with other authorities.

The mandate provided in the Act on the Ombudsman for Minorities and National Discrimination Tribunal empowers the Ombudsman upon encountering ethnic discrimination to:

- Try to put an end to discrimination and prevent its recurrence by issuing advice and recommendations.
- Make initiatives and submit recommendations and advice.
- Institute proceedings pertaining to ethnic discrimination.
- Delegate a reported case to a competent authority.
- Issue a statement regarding the delegated case.<sup>28</sup>

The Decree on the Ombudsman for Minorities and the National Discrimination Tribunal provides that the Ombudsman must annually submit a report of operations to the Ministry of the Interior.<sup>29</sup> These annual reports provide the most comprehensive account of the operations of the Ombudsman for Minorities. The reports are available at the internet site of the Office of the Ombudsman for Minorities in Finnish, Swedish and English.

In addition to annual reports, the Office of the Ombudsman for Minorities has published five reports. The first report<sup>30</sup> was published in 2005. The second report<sup>31</sup> was also published in 2005. Also in 2005, as part of the EurEquality project, the Office of the Ombudsman for Minorities carried out a study on available assistance, what it contains and how its quality should be assessed.<sup>32</sup> In 2007, ESKO project final report<sup>33</sup> was published. In 2008, the Ombudsman

---

<sup>28</sup> Finland/660/2001 (30.12.2008).

<sup>29</sup> Finland/687/2001 (30.12.2008).

<sup>30</sup> Office of the Ombudsman for Minorities (2005) *Development of anti ethnic discrimination advisory activities.*

<sup>31</sup> Office of the Ombudsman for Minorities (2005) *Legal protection safeguards in the accelerated asylum procedure: speed, efficiency or justice?*

<sup>32</sup> Office of the Ombudsman for Minorities (2006) *Advisory Services against Ethnic Discrimination in Municipalities.*

<sup>33</sup> Office of the Ombudsman for Minorities (2007) *Employment and Economic Development Centre coordination of advisory services against discrimination.*

published a report<sup>34</sup> on the supply of or access to services in Sami language in the Metropolitan area. All reports are available through the website of the Ombudsman for Minorities.<sup>35</sup>

The National Discrimination Tribunal of Finland is an independent legal rights authority administratively affiliated with the Ministry of the Interior. The legal basis for the National Discrimination Tribunal is provided in the Act on the Ombudsman for Minorities and the National Discrimination Tribunal.<sup>36</sup> The second National Discrimination Tribunal was appointed by the Council of State for a term of four years on 19.02.2008. The Act on the Ombudsman for Minorities and the National Discrimination Tribunal provides that the Tribunal consists of a chairperson, six members and a secretary. In addition, each member is appointed a personal deputy member. The requirements are such that the chairperson, at least three members and their deputy members, and the secretary must be qualified for a judge's post.

The sole role of the National Discrimination Tribunal is to function as a formal decision-making body. The Tribunal is equivalent to a court of law. Its decisions, however, have the same legal effect as a judgment by a general court of law. Nevertheless, it does not replace the existing appeal procedures or authorities and it does not have the competence to change the decisions of these authorities.

The Act on the Ombudsman for Minorities and the National Discrimination Tribunal provides that the function of the Tribunal is to handle and solve those issues that are stipulated as its responsibility in the Non-Discrimination Act. The Non-Discrimination Act provides that the function of the Tribunal is to supervise the prohibition on ethnic discrimination other than in employment and service relations governed by public law. Although having the same function as the Ombudsman for Minorities, the powers assigned to them are different. In cases of ethnic discrimination, the Tribunal is empowered:

- To confirm a conciliation settlement between the parties.
- To prohibit the continuation of discrimination or repeat of discriminatory conduct.
- To make statements on the application of the Non-Discrimination Act in cases of ethnic discrimination on the request of the courts, the Ombudsman for Minorities, other authorities and associations.

---

<sup>34</sup> Office of the Ombudsman for Minorities (2008) *Sami language in the Metropolitan area*.

<sup>35</sup> <http://www.ofm.fi> (26.02.2009).

<sup>36</sup> Finland/660/2001 (30.12.2008).

Any victim of behaviour contravening the prohibitions of the Non-Discrimination Act, or the Ombudsman for Minorities, may submit a matter of ethnic discrimination to the National Discrimination Tribunal of Finland.

A court of law, the Ombudsman for Minorities, other public authorities or voluntary associations may request the opinion of the National Discrimination Tribunal of Finland on the application of the Non-Discrimination Act to any matter of ethnic discrimination.

All cases are settled at the sessions of the Tribunal on the basis of written submissions. Applications to the National Discrimination Tribunal of Finland must be submitted in writing in Finnish or Swedish or if necessary, also in English.

The Act on the Ombudsman for Minorities and the National Discrimination Tribunal provides that a session of the Tribunal has a quorum provided that the chairperson and at least half of the members are present.<sup>37</sup> All decisions of the Tribunal are legally binding: that is, it does not matter whether it concerns a conciliation settlement, a prohibition on the continuation of discrimination or repeat of discriminatory conduct or a statement on the application of the Non-Discrimination Act. When the Tribunal issues a prohibitive decision, it shall where necessary incorporate into the decision a reasonable period of time within which the decision must be complied. To enforce a prohibitive decision, the Tribunal may impose a conditional fine and order payment.<sup>38</sup>

Decisions of the National Discrimination Tribunal may be appealed to the Administrative Court of the judicial district of which the person allegedly discriminated against resides.<sup>39</sup> The two limitations in the mandate of the Tribunal are that it may not investigate a case, which has been or is to be taken up by another authority such as a district court and it does not have the competence to change the decisions of other authorities. Public authorities may request a statement from the Tribunal on the application of the Non-Discrimination Act in cases of ethnic discrimination other than in employment or service relations.

Finally, the role of the Parliamentary Ombudsman deserves to be mentioned in this respect, too. Investigating complaints constitutes the central component of the Ombudsman's work. The Ombudsman receives complaints under a broad mandate but, as noted, she/he pays special attention to constitutional rights and human rights. In 2007, for example, the Ombudsman

---

<sup>37</sup> Finland/660/2001 (30.12.2008).

<sup>38</sup> Finland/21/2001 (14.11.2008).

<sup>39</sup> Finland/21/2001 (14.10.2008).

received nearly 3,500 new complaints generally involving criticism of the procedures that authorities have followed or of the contents of their decisions.<sup>40</sup> She/he may also investigate matters on her/his own initiative. For example, news reports in the media or alleged incidents of unlawfulness may lead to an investigation. The Ombudsman may order prosecution in serious cases but usually she/he issues a reprimand. In addition to complaints, the Ombudsman receives some 400 to 500 other written communications each year.<sup>41</sup>

## 8. Legal aid

Public legal aid can be granted in court proceedings. Legal aid will not be given if the matter is regarded of little importance to the applicant, or if legal aid would be clearly pointless or if the pursuit of the matter would constitute an abuse of process. Legal aid shall be given at the expense of the state to a person who needs expert assistance in a legal matter and who for lack of means cannot himself or herself pay the expenses of having the matter dealt with. Legal aid covers the provision of legal advice, the necessary measures and representation before a court of law and another authority, and the waiver of certain expenses of the consideration of the matter. However, legal aid shall not cover an attorney's services in a matter of taxation or a public charge, unless there are especially weighty reasons for this.

A victim of discrimination may be granted legal assistance, *e.g.*, for instantiating a civil proceeding to claim compensation by virtue of the Non-Discrimination Act. The clients of public legal aid offices have a choice of a public legal aid attorney or a private attorney for his/her court proceedings. In addition to court proceedings, legal aid also covers other legal services such as, *inter alia*, drafting of documents and filing of appeals and complaints.

In Finland, the Office of the Ombudsman for Minorities may be regarded as the most influential statutory body working in support of the rights of victims of ethnic discrimination. The Office of the Ombudsman for Minorities can advise anyone preparing an application to the National Discrimination Tribunal of Finland. In addition to the Office of the Ombudsman for Minorities, there are two other statutory bodies that have a role in supporting victims of ethnic discrimination, namely the National Discrimination Tribunal and the Occupational Safety and

---

<sup>40</sup> See Parliamentary Ombudsman, *Annual Report 2007*. An English summary is available at: <http://www.oikeusasiamies.fi/dman/Document.php?documentId=v122108104517482&cmd=download> (13.10.2009).

<sup>41</sup> See in more detail the statistics presented in T. Ojanen (2008) *FRA Thematic Legal Study on National Human Rights Institutions and Human Rights Organisations in Finland*, para. 75.

Health Authorities. The Ombudsman for Minorities has the most effective mandate of them all and provides quantitatively most assistance to victims of ethnic discrimination.

According to the Ombudsman, if the need for legal assistance was deemed necessary, customers have been advised to use customary legal assistance. These have included the legal services provided by trade unions, public legal assistance offices and members of the Finnish Bar Association.<sup>42</sup>

The National Discrimination Tribunal does not provide advice, arbitration, legal aid or representation to victims of ethnic discrimination. The Occupational Safety and Health Authorities do not provide legal aid or representation when the case is processed through the courts either. In addition to submitting guidelines of the non-discrimination legislation to employers during an investigation of a discrimination case, the Occupational Safety and Health Inspectors mainly provide information to workplaces about non-discrimination legislation at inspections.

The role of NGOs is limited in assisting victims of discrimination because associations do not have a right to take a case to the court or to the National Discrimination Tribunal. However, there are some NGOs that can be contacted if discrimination has occurred, for example multicultural organisations and NGOs representing minorities. These NGOs can give advice on proceedings. However, the main function of the NGOs is not offering advice and assistance.

Many workplaces have locally elected union representatives (shop stewards) who are authorised to represent the affairs of employees at the workplace. While these local union representatives generally provide the easiest and most personal way for the member to contact the union, it is also possible for the member to contact the regional or national office of the union for assistance and advice when necessary. The procedure for providing assistance to victims of discrimination is similar to that in other cases where legal action is considered necessary.

---

<sup>42</sup> Office of the Ombudsman for Minorities, *Annual Report 2002*. Available at: [http://www.ofm.fi/intermin/vvt/home.nsf/files/annual\\_report2002/\\$file/annual\\_report2002.pdf](http://www.ofm.fi/intermin/vvt/home.nsf/files/annual_report2002/$file/annual_report2002.pdf) (13.10.2009).

## 9. Forms of satisfaction available to a vindicated party

According to the Non-Discrimination Act, the maximum compensation from discrimination is EUR 15,000. According to the Act on Equality between Women and Men, the minimum compensation is EUR 3,240. In addition, it is possible to request more compensation based on economical loss according to other national legislation. In case there is an economical loss the compensation should cover that as a whole. However, punitive compensation is illegal. There are no other forms of satisfaction such as public apology.

## 10. Adequacy of compensation

According to the Non-Discrimination Act, the maximum compensation is EUR 15,000. According to the Act on Equality between Women and Men, the minimum compensation is EUR 3,240. In case discrimination has happened in employee recruitment and the employer can prove that the employee would not have been given the job even if discrimination had not happened, the maximum compensation is EUR 16,210.

In both situations it is still possible to ask more compensation based on economical loss according to other national legislation. Therefore the real economical loss will always be compensated.

## 11. Rules relating to the payment of legal costs

Chapter 21 of the Code of Judicial Procedure covers this issue. The main rule is that ‘the winner takes it all’, that is, a party who has lost the case has to compensate the legal costs of the winning party. The exceptional rules exist in situations where the case has been legally unclear or when there is no actual winner. In addition, it is possible to make the compensation equitable in some situations, where the winning party is for instance very wealthy (like state authority etc.) as compared to the party who has lost the case.

In administrative law cases, liability for costs is regulated differently. According to Section 74 of the Administrative Judicial Procedure Act, a party shall be liable to compensate the other party for his or her legal costs in full or in part, if especially in view of the resolution of the matter it is unreasonable to make the latter bear his or her own costs. When assessing the liability of a public authority, special account shall be taken of whether the proceedings have arisen from the error of the authority. However, a private individual shall not be held liable for the costs of a public authority, unless the private individual has made a manifestly unfounded claim.

## 12. Rules on burden of proof

The Non-Discrimination Act<sup>43</sup> brought the concept of shared burden of proof (explicitly formulated) as a new element into Finnish national legislation. At this point it is difficult to assess the importance of the shared burden of proof because the number of court cases is low.

---

<sup>43</sup> Finland/21/2004 (14.11.2008).