



The Law as a tool for social change (Lagen som verktyg) a project under Independent Living Institute in Stockholm, Sweden

OVERVIEW: Equality/non-discrimination law and disability in the Nordic countries

The law as a tool project has with support from the lawyer and researcher in discrimination law Paul Lappalainen compiled this overview of equality and non-discrimination law in the Nordic countries, with a particular focus on disability. The overview contains:

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Finland

In Finland, protection against discrimination concerning persons with disabilities was written into the Constitution in 1995 (731/1999). Chapter 2, Section 6 states: "Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person."

Non-Discrimination Act¹

The Finnish Non-Discrimination and Gender Equality Act (1325/2014) from 2014 allows positive treatment according to Chapter 3, Section 9. Furthermore, according to Chapter 2, Section 5, the authorities shall promote equal treatment.

In accordance with Chapter 3, Section 15, concerning reasonable accommodation, authorities, education providers, employers and providers of goods or services shall make appropriate and reasonable accommodations to enable persons with disabilities to, on an equal footing with others, deal with the authorities and gain access to education, work and generally available goods and services, as well as to manage their work tasks and advance their career.

In assessing which accommodations are reasonable, the needs of people with disabilities should be considered, as well as the size, financial position, nature and extent of the operations of an actor referred to, as well as the estimated costs of the accommodations and the support that can be received for the accommodations.

Regulatory agencies

The Discrimination Ombudsman, the Discrimination and Gender Equality Board, and the Labour Protection Authorities monitor compliance with the Non-Discrimination Act.

The Discrimination Ombudsman

The Discrimination Ombudsman provides assistance to those who have been discriminated against and provides recommendations on how to prevent discrimination and promote equal treatment. The Ombudsman may, in individual cases, give reasoned positions to prevent a procedure which is contrary to the Act or to prevent such procedures from continuing or being repeated, unless it is a matter which is subject to the supervisory authority of the Occupational Safety and Health Authorities or involves the interpretation of a collective bargaining agreement.

¹ Note from the translator/author – I have primarily used the term act even though it is interchangeable with the word law. Also, even where quotation marks are used, they are unofficial translations from the original language.



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The Discrimination and Gender Equality Board

The Discrimination and Gender Equality Board (Act 1327/2014) is an independent and impartial judicial body that monitors compliance with the anti-discrimination and gender equality law in private activities as well as in public administration and business. The Board shall provide legal protection to those who experience discrimination or have been exposed to prohibited reprisals in connection with discrimination.

The Board does not charge any fees and the parties themselves pay for their legal costs. The Board's decisions can be appealed to the Administrative Court. The Board's jurisdiction does not cover matters relating to private and family life or religious practices. Also, the Board does not have supervisory powers concerning the activities of the president of the republic, the council of ministers, the courts and other judicial bodies, the Chancellor of Justice or the Parliamentary Ombudsman.

The Discrimination and Gender Equality Board approves settlements (which may be enforced as final judgments) and issues opinions at the request of a court, the discrimination ombudsman or another authority or an association that promotes equal treatment.

The board may also prohibit actors who discriminate from continuing or repeating discriminatory behaviour or reprisals. The board can also order the actor to take action within a reasonable time to fulfil its obligations under the Non-Discrimination Act. The board may issue an order concerning the payment of a fine, but it cannot order the payment of remuneration or other forms of compensation to individuals.

The Occupational Safety and Health Authorities

In accordance with Chapter 4, Section 22, of the Non-Discrimination Act, the Occupational Safety and Health Authorities are ^{§ 22} to monitor compliance with regard to employment contract relationships and employment in the public sector, traineeships and other comparable activities concerning employment. They shall take action on complaints and may request the opinions of the Discrimination Ombudsman or the Discrimination and Gender Equality Board.

The Criminal Code

There is also a prohibition of discrimination in Chapter 11, Section 11 of the Criminal Code, in which the term state of health includes "disability". The prohibition applies to a "person who in his or her trade or profession, service of the general public, exercise of official authority or other public function or in the arrangement of a public amusement or meeting, without a justified reason, (1) refuses service in accordance with the generally applicable conditions; (2) refuses someone entry to the event or meeting or ejects him or her; or (3) places someone in a clearly unequal or otherwise essentially inferior position," because of her or his race, national or ethnic origin, skin colour, language, sex, age, family relationship,

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sexual orientation, genetic heritage, disability, state of health, religion, social opinion, political or trade union activity or any other comparable circumstance. If the offense is not punished as discrimination in working life, the person can be sentenced to a fine or imprisonment for a period not exceeding six months.

Concerning discrimination in working life, Chapter 47, Section 3 of the Penal Code states that an employer who, without acceptable reasons, puts a job seeker or employee in a disadvantaged position due to, among other things, her or his disability or state of health, can be sentenced to a fine or imprisonment for a maximum of six months. This applies to advertisements for jobs, recruitment decisions or employment conditions.

Employment Contracts Act

There is a general prohibition of discrimination in the Employment Contracts Act, which also refers to the Non-Discrimination Act, including the grounds of discrimination due to disability or state of health. Concerning the duties of an employer, according to Chapter 2, Section 2, of the Act (30.12.2014/1331): An employer must treat all employees equally, unless deviating from this is justified in view of the duties and position of the employees. Furthermore, without proper and justified reasons, less favourable employment terms than those applicable to other employment relationships must not be applied to fixed-term or part-time employment relationships merely because of the duration of the employment contract or working hours. There is then a reference to the provisions on equality and the prohibition of discrimination in the Non-Discrimination Act as well as the Act on Equality between Women and Men (609/1986). Concerning penalties, Chapter 13, Section 11, refers to Chapter 47, Section 3, of the Criminal Code of Finland.

National Human Rights Institution

Since 2012, Finland has a National Human Rights Institution. Together the Human Rights Centre, the Human Rights Delegation and the Parliament's Justice Ombudsman, constitute the Finland's national human rights institution. The institution's actors are all impartial and independent in relation to the Parliament. The human rights institution does not accept complaints from individuals.

Åland

The autonomous region of Åland has the same laws as Finland in terms of content, but may under their right of autonomy put those laws into effect at a different rate than the rest of the country, explains Pirkko Mahlamäki, Secretary General of the Disability Forum of Finland. The prohibition of discrimination on Åland applies in the public sector in such a manner that the region and municipalities on Åland will make it possible in particular for persons with disabilities to be able to work as civil servants and to further educate themselves and be promoted.

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Norway

Since 2009, the Act on Discrimination and Accessibility (Act 2008-06-20 No. 42) has been in effect. The Act contains a general prohibition of direct and indirect discrimination as well as requirements related to general and individual equality promotion work. Inadequate accessibility is considered to be a form of discrimination and the law contains requirements concerning universal design.

Comprehensive anti-discrimination law as from 2018

From 2018, Norway has consolidated four previous anti-discrimination laws in the Act relating to equality and a prohibition against discrimination (Equality and Anti-Discrimination Act – Act 2017-12-19 No. 115). The purpose of the Act is to establish a comprehensive law that harmonises all protection against discrimination. The discrimination grounds covered are gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or other significant characteristics of a person.

The Norwegian anti-discrimination legislation has a broad definition of who is protected as well as covering a combination of the grounds of discrimination, making it one of the few anti-discrimination laws that expressly covers intersectionality. Within certain limits, in relation to the different grounds of discrimination, positive treatment is permitted under Section 11.

Universal Design Requirements

Sections 17-19 of Chapter 3, of the Equality and Anti-discrimination Act, set out the requirements concerning universal design. According to Section 17, public and private undertakings aimed at the public have a duty to ensure that their general functions have a universal design, as long as it does not impose a disproportionate burden on the undertaking. The general functions of the undertaking should be available to be used by as many people as possible, regardless of disability.

Universal design includes buildings and developed outdoor areas, transport and information and communication technology. There are regulations for buildings and transport that contain legally binding standards that state the requirements that must be met to ensure universal design. According to Section 19, public and private undertakings shall actively work to promote universal design in their operations. This duty also applies even where there are no similar duties in other laws. The King may issue regulations for areas not covered by the requirements.

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According to Berit Vegheim, from the Norwegian foundation Stop Discrimination, a weakness in the law is that there are no definitive deadlines as to when buildings and transport should be designed universally. Concerning information and communication technology (ICT) there is a deadline that requires all existing ICT to be universally designed by 2021. ICT is specifically regulated in section 18.

Individual accommodations

According to Section 20, children with disabilities have a right to suitable individual accommodations in respect of municipal day care facilities, and persons with disabilities have a right to suitable accommodations in respect of individual long-term municipal care services.

Section 21 provides a right to individual accommodation of pupils and students in the education system in respect of the place of learning, teaching, teaching aids and examinations and to ensure equal training and education opportunities.

Section 22 provides a right to suitable individual accommodation in working life in regard to recruitment processes, workplaces and work tasks, to ensure that they have the same opportunities as other persons to secure or sustain employment, benefit from training and other skills development measures, and carry out and have the opportunity to progress in their work.

The rights to individual accommodation described in Sections 20-22 may be required only if the accommodation that does not impose a disproportionate burden. The assessment of proportionality will take into account the effect of the accommodation in dismantling barriers for persons with disabilities, the costs related to the accommodation and the resources of the undertaking.

New "court" or tribunal for discrimination cases

From 2018, the Equality and Discrimination Ombud (LDO) no longer deals with individual complaints, but only informs about rights, the prohibitions concerning discrimination and how violations can be reported, as well as motivated. However, the LDO may still bring actions in court.

Instead, all complaints from 2018 will be submitted to the revised Anti-Discrimination Tribunal (LDN), which has become a more independent institution with greater powers than before. Previously the LDN could only determine that there had been a breach of the Anti-Discrimination Act and only impose fines when any of the LDN's orders were not followed. In order to receive compensation and redress, an individual had to take the case to court on their own.

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The new LDN, which in Norway is called the "Discrimination Tribunal", is located in Bergen and consists of three judges. It will be able to make legally binding decisions on discrimination, including setting the amount of compensation (or damages). The Tribunal will handle all forms of discrimination other than sexual harassment.

For more information see Norway's Act relating to the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal (Equality and Anti-Discrimination Ombud Act). On the web at https://lovdata.no/dokument/NLE/lov/2017-06-16-50#KAPITTEL_3

The Penal Code

From 2013 the Penal Code (Penal Code Act, May 20, 2005, No. 28) provides protection against discrimination and hate crimes. Section 186 states that imprisonment for a maximum of 6 months can be applied to a person who denies a person goods or services or access to a public gathering due to among other things (d) reduced functional capacity, provided that the refusal is not due to a lack of a physical accommodation.

The ban includes discrimination concerning nightclubs and restaurants. For example, a person with a guide dog who is denied admission can report it to the police, and the police are to follow up in accordance with the provisions of the Penal Code.

All of the provisions of the Penal Code on hate speech and other hate crimes (Sections 185 – hate speech, 272-274 – concerning violent crimes, and 351-352 concerning vandalism and aggravated vandalism) include "impaired functional capacity" (disability) as one of the circumstances that may increase the penalty.

Incorporation of conventions

In Norway, the Convention on the Rights of the Child applies as law since 2003. Furthermore, according to Section 5 of the Equality and Anti-Discrimination Act, the United Nations Convention on Racial Discrimination now also applies as Norwegian law. However, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD) do not apply as Norwegian law. Finally, Norway has a National Human Rights Institution linked to Oslo University.



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Denmark

The Danish Constitution includes protection from arbitrary discrimination in public activities. This means that individuals have the right take discrimination cases to the courts. However, this is rarely done. The Public Administration Act and Administrative Procedural Law rules provide a general protection against special or unequal treatment that lacks an objective basis. Disability constitutes a discrimination ground since 2004. The 1996 Act Prohibiting Discrimination on the Labour Market did not initially contain disability as a ground. It was introduced later in conjunction with the 2004 Law implementing the EU Equal Treatment Directive 2000/78 that applies to working life.

However, this protection against discrimination for persons with disabilities applies only to the labour market and not, for example, to education. Inadequate accessibility has not generally been included in the legislation against discrimination, although the principle of reasonable accommodation applies to working life. It should be noted that the Danish Building Act contains rules that require new buildings and buildings under renovation to apply national accessibility standards. However, these rules do not cover all aspects of disability. Furthermore, there are no sanctions in regard to those who fail to comply with the building rules.

Danish Board of Equal Treatment

Complaints about discrimination due to disability in working life can be submitted to the Equal Treatment Board (Ligebehandlingsnævnet), which belongs to the National Ankestyrelsen, an appeals instance that handles labour market, educational and social issues.

The Equal Treatment Board can only deal with labour market discrimination issues in relation to persons with disabilities. In addition to this, there are a variety of units in different departments that have some responsibility for disability discrimination issues. For example, to lodge complaints concerning transport or civil aviation, different agencies have jurisdiction.

Positive treatment

In some areas of society, the positive treatment of people with disabilities is allowed. For example, on the labour market, persons with disabilities have the right to be called to an interview if they are as qualified for the work as other applicants. Positive treatment can also be applied to certain general sales outlets such as kiosks and in regard to taxi licenses.

National Human Rights Institution

Denmark has a National Human Rights Institution, the Danish Institute of Human Rights (DIHR), which submits annual reports to the Parliament (Folketing) on how human rights are respected in Denmark. The Parliament decided in 2010 that the DIHR should promote,

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protect and monitor the implementation in Denmark of the Convention on the Rights of Persons with Disabilities. In addition, the DIHR writes on its website that it wants to contribute to a debate on what the Convention actually means for people with disabilities in Denmark. Victims of discrimination can receive advice and support on how to proceed with their case from the DIHR's equal treatment advice service.

[Resistance to a Human Rights perspective](#)

According to Stig Langvad, a member of the UN Committee on the Rights of Persons with Disabilities, Danish legislation is still characterized by a medical view on disability. The human rights model has not yet made a breakthrough. Among other things, he sees an opposition to incorporating a human rights perspective into the decisions that become part of the appeals process. He hopes that the current parliamentary debate on extending the protection against discrimination will be more in line with the EU's anti-discrimination directives, and in particular with the Convention on the Rights of Persons with Disabilities.



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Sweden

Constitution

Sweden's constitution consists of four fundamental laws. One of these, the Instrument of Government (IG), specifies certain fundamental policy objectives in IG 1:2. In particular it states that, "Public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, disability, sexual orientation, age or other circumstances that apply to an individual."

While it was important that disability was included here, it should be emphasized that this paragraph is a statement of objectives. IG 2:12 and 2:13, on the other hand, clearly prohibit laws or other provisions that may imply unfavourable treatment (discrimination) due to ethnic origin, colour, or other similar circumstances, or on account of their sexual orientation (2:12), or on account of their gender (2:13). Disability is not specifically included in these or any other more concrete provisions in the constitution.

However, it should be pointed out that according to IG 2:19, no act of law or other provision may be adopted which contravenes Sweden's undertakings under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The ECHR thereby has semi-constitutional status in Sweden that also means that the ECHR and the relevant case law that applies to disability discrimination, is case law in Sweden as well.

Discrimination Act

Today, Sweden's primary law against discrimination is the law that went into effect on 1 January 2009 (Discrimination Act 2008:567). To a large extent it was the result of a consolidation of the complicated web of Sweden's seven previous civil anti-discrimination laws. There were four separate laws that banned discrimination in working life that were ground-based (gender, ethnic background and religion or other belief, disability and sexual orientation). In addition there were three multi-ground laws (including disability) banning discrimination in higher education, discrimination against pupils and discrimination in other fields of social life such as access to goods and services.

The Discrimination Act has two basic approaches to dealing with discrimination. One prohibits discrimination on the grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation and age. The second approach involves imposing a duty on employers and educators, respectively to undertake active measures to promote equality.

Prohibition of discrimination

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On the various grounds specified in the Act, Chapter 2 prohibits discrimination in large parts of society such as working life, education, the provision of goods, services and housing, membership in certain organisations, health care and public services. While reasonable accommodation in working life was required in the 2009 Act, inaccessibility in other fields was not included as a form of discrimination.

Inadequate accessibility as a form of discrimination

Initially various forms of discrimination were specified – direct discrimination, indirect discrimination, harassment, sexual harassment, and instructions to discriminate. In 2015 inadequate accessibility as a form of discrimination was added to the Act (Chapter 1, Section 4, point 3). Basically the act states that discrimination covers a person with a disability who is disadvantaged through a failure by another to undertake reasonable measures for accessibility. Determining reasonableness depends on the accessibility requirements in laws and other statutes as well as taking into account the financial and practical conditions, the duration and nature of the relationship or contact between the operator and the individual, and other circumstances of relevance.

Thus far, since few cases have been taken to court, it is hard to say whether or not the addition of inadequate accessibility as a form of discrimination has or can make a difference. Presumably, in Sweden as well as in other countries, the challenge is in determining the actual meaning of reasonable accommodation.

Active measures

In 2009, the active measures portion of the Act (Chapter 3) only applied to the grounds gender, ethnicity and religion or other belief. As from 2017 the active measures portion covers all grounds including disability.

According to Chapter 3, Section 1, active measures are the preventive and promotional work carried within an organisation to counteract discrimination and in other ways work for the realization of equal rights and opportunities regardless of sex, gender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

While it is positive that disability as well as all the other grounds are covered in relation to active measures in general, the problem with the active measures portion of the Act was not just the grounds covered, but the inadequacy of the monitoring and potential enforcement - and thus effectiveness of the measures themselves. The amendments to the Act simply did not deal with these issues. Some experts have pointed out that it is hard to understand how more paperwork will generate more equality. This is also indicated by the fact that the more specific and potentially more effective provisions concerning active measures relate only to the ground of sex (gender).

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The Equality Ombudsman

Prior to 2009, there were four anti-discrimination ombudsmen, which basically covered gender, ethnicity and religion or other belief, disability and sexual orientation, respectively. These government agencies were essentially merged as from 2009 in accordance with the Act concerning the Equality Ombudsman (2008:568).

The Equality Ombudsman (DO) has the duties described in the Discrimination Act as well as the duty in other ways to counteract discrimination and promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

The DO has a broad mandate that includes the right to investigate complaints, take cases to court on behalf of persons who report discrimination, propose legislative amendments and taking the *initiative concerning other appropriate measures*.

Equality bodies in many countries have both a law enforcement role as well as an education and information role. Equality bodies were initially created to provide some balance to the clear imbalance of power that generally existed and exists between those with the power to discriminate (e.g. employers) and the victims or targets of discrimination. The development of case law is necessary to changing the norms that exist in society, particularly if education measures are to be successful. At the same time, providing legal advice and/or representation to the victims or targets of discrimination, necessarily means that the equality body is willing to challenge those with the power to discriminate. The important question that needs to be posed to any equality body, and especially a body like the DO which has a broad mandate and substantial funding, is do they have an effective strategy that will lead to a change in the behaviour of those with the power to discriminate?

The Swedish Agency for Participation

The Swedish Agency for Participation works to ensure that Sweden's disability policy will have an impact in all corners of society. According to the agency its basic premise is that everyone is entitled to full participation in society, regardless of functional ability. Among other things, this is done through the Agency's monitoring and analysing developments, proposing methods, guidelines and guidance, disseminating knowledge, initiating research and other development work, and providing support and proposing measures to government. The work that is done is determined by the goals and strategies of the government's disability policy. Within this framework, the work is carried out in relation to and on behalf of national authorities, municipalities and county councils.

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While it does not have a law enforcement role, this agency is an important source of knowledge and expertise in the field of disability rights.

Regulation on Anti-Discrimination Conditions in Contracts

The purpose of the Regulation (2006:260) on Anti-Discrimination Conditions in Contracts is to raise awareness of and compliance with the Discrimination Act. The regulation requires Sweden's 28 largest government agencies to include an anti-discrimination clause in their larger contracts for services and building contracts.

In the government inquiry that proposed the Regulation (The Blue and Yellow Glass House: Structural Discrimination in Sweden. SOU 2005:56) it was expected that the regulation, properly formulated and enforced, would be an important complement to the limited monitoring and potential sanctions concerning active measures available under the Discrimination Act. This was based on the assumption that business owners understand well-written contract clauses and the associated cost risks rather than well-meaning laws that have high ambitions but lack the tools needed to make them relevant.

One clear source of inspiration for the regulation was the manner in which the United States connected non-discrimination and proactive duties to public funds, including in regard to public contracts (see e.g. Executive Order 11246 and section 503 of the Rehabilitation Act).

As with other aspects of Swedish anti-discrimination law, the problem is not the stated intention but what seems to be the lack of monitoring, enforcement and meaningful remedies. As to the clauses themselves, thus far there have been no analyses of the actual clauses that are in place and whether or not they can be effective, much less if they are actually effective.



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Iceland

Constitution

Article 65 of the Icelandic Constitution states: "Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status. Men and women shall enjoy equal rights in all respects."

Article 76 (1) states: "The law shall guarantee for everyone the necessary assistance in case of sickness, disability, infirmity by reason of old age, unemployment and similar circumstances."

There is no specific anti-discrimination legislation that protects people with disabilities. However, Iceland has ratified the Convention on the Rights of Persons with Disabilities and takes into account the case law of the European Court of Justice even though, for example, the EU Employment Equality Directive (2000/78) does not form part of the European Economic Area (EEA) Agreement agreed to by Iceland.

Disability Act

[The Icelandic Disability Act](#) (No. 59/1992 as amended through 2015) is a framework law concerning state and local government services for people with disabilities. Article 1 states that account must be taken of the international obligations that apply to Iceland in the implementation of the Act. At the Welfare Ministry there is a rights office, which oversees legal issues regarding the rights of persons with disabilities.