



Human Rights and Multiple Discrimination of Minorities within Minorities:

Sámi persons with disabilities and sexual and gender minorities

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1. Introduction

This study focuses on the multiple discrimination faced by two Sámi minority groups - Sámi persons with disabilities and Sámi identifying as a sexual and/or gender minority - and on the implementation of the fundamental and human rights of these minority groups in Finland. Minority groups within minorities are in a special position in society and their voices often remain mute alongside the dominant population¹. In their official statements, UN officials, for example, have identified indigenous peoples as a group whose members face multiple discrimination in societies². Indigenous minority groups are in an even more vulnerable position and special attention should be paid to improving their status.

The Sámi are the only legally recognised indigenous people in Finland and the EU.³ In Norway they are about 50 000 to 70 000, in Sweden 15 000 to 20 000, in Russia 2000 and according to data gathered in Finland in 2015, there are 10 463 Sámi in Finland, 3499 of whom live in the Sámi homeland.⁴ Much of the Sámi people living in Finland currently reside outside the Sámi homeland, which covers the territory of Inari, Utsjoki and Enontekiö municipalities, as well as the area of the Lappi reindeer-herding cooperative in Sodankylä. The Sámi homeland in Finland has about 18 700 inhabitants, so the Sámi are currently a minority in the area. Only in Utsjoki municipality are the Sámi in the majority.⁵

¹ See in general on minorities within minorities e.g. Eisenberg, Avigail & Spinner-Halev, Jeff (eds.), *Minorities within minorities, Equality, Rights and Diversity*. Cambridge: Cambridge University Press (2005).

² See chapter 5.5. of this report.

³ The Government Bill, HE 248/1994; PeVM 12/1990 vp. See also Heinämäki, Leena, "Saamelaisten oikeudet Suomessa", in Heinämäki, Leena, Allard, Christina, Kirchner, Stefan, Xanthaki, Alexandra, Valkonen, Sanna, Mörkenstam, Ulf, Bankes, Nigel, Ruru, Jacinta, Cilbert Jéremie, Selle, Per, Simpson, Audra & Olsén, Laura, *Saamelaisten oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston kanslia, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja (2017/4)*, p.22.

⁴ Heinämäki, L. (2017), p. 22; *Saamelaiskäräjien toimintaohjelma ja taloussuunnitelma 2016–2019*, p.3.

⁵ *Economic Strategy Plan of the Sámi Parliament, Saamelaiskäräjien toimintaohjelma ja taloussuunnitelma 2016–2019*, p. 3. See also Heinämäki, L. (2017), p. 22.

There are three Sámi languages spoken in Finland. They are North Sámi (some 70-80 % of Sámi speakers), Skolt Sámi (less than 15 %) and Inari Sámi (less than 15 %). All the Sámi languages are endangered, but the smaller ones, Skolt Sámi and Inari Sámi, are especially vulnerable.⁶

This study, however, does not concentrate on the Sámi internal language minorities. For this study, we have chosen Sámi persons with disabilities, and Sámi persons identifying as a sexual and/or gender minority as the internal minorities researched, mainly in consideration of the Sámi community's expressed need for further information on these minorities. The exact number of Sámi persons with disabilities, or members of Sámi persons identifying as a sexual or gender minority living in Finland is unknown. However, for both minorities, the number can be expected to be relatively small. For example, in World Report on Disability published in 2011 by the WHO, some 15% of the world's population live with some sort of disability, which can be used as an indicator in estimating a figure.⁷ Similarly, the number of Sámi persons identifying as a sexual or gender minority can be expected to be relatively small, as in Finland it is estimated that only between 5 to 15% of the total population belongs to a sexual minority⁸. Regarding gender minorities, the estimated number of transgender, transvestites⁹, and intersex persons are usually the only figures discussed. Accordingly, it is estimated that there are between 1:500 and

⁶ Economic Strategy Plan of the Sámi Parliament, Saamelaiskäräjien toimintaohjelma ja taloussuunnitelma 2016–2019, p.3. See also Heinämäki, L. (2017), p. 22.

⁷ WHO, World Report on Disability, World Health Organization & World Bank, Malta (2011), p. 7.

⁸ Lehtonen, Jukka, Seksuaali- ja sukupuolivähemmistöt Suomen kunnissa, Keinoja ja ideoita yhdenvertaisuuden tueksi, Työministeriö, Euroopan sosiaalirahasto 2000-2006, Tutkimukset ja selvitykset 8/06, Helsinki: Oy Edita Ab (2006), p.14. Available at: http://www.rakennerahastot.fi/vanhat_sivut/rakennerahastot/tiedostot/esr_julkaisut_2000_2006/tutkimukset_ja_selvitykset/09_08-06_seksuaali-ja_sukupuolivahemmistot_suomen_kunnissa_keinoja_ja_ideoita_yhdenvertaisuuden_tueksi.pdf

⁹ In this research report, the term transvestite is used, even though the researchers are aware that this term is not preferred to be used in English and it may have different connotation in its use in English than in Finnish. However in this context the existing data differentiate based on these categories and in the guidelines created by Seta – LGBTI Rights in Finland (which is a national human rights NGO in Finland) for persons who are writing about gender and sexual minorities it says that transvestites in Finland prefer to be referred by the term transvestite (Seta, Opas toimittajille - Näin kirjoitat seksuaali- ja sukupuolivähemmistöistä, (2016), 7. Available at: https://www.dropbox.com/s/x198rqyo222godo/Setan_toimittajaopas_2016.pdf?dl=0).

1: 50 000 transgender persons, that transvestites could compose about 1-2% of the population, and estimates of the number of intersex children in Finland vary depending on the source.¹⁰

1.1 Structure of the report

This report deals mainly with two clearly distinct groups of minorities within minorities, their rights and the multiple discrimination they face. However, before the minority-specific chapters, we first introduce the research methods used in this study, the concept of multiple discrimination, and discuss the rights of the Sámi as indigenous people on a general level.

After a chapter discussing the research methods, we outline how this report defines discrimination, and explain the concept of multiple discrimination further. In connection with multiple discrimination, we also discuss intersecting or intersectional discrimination and the concept of intersectionality, and explore its theoretical premises. Chapter 3.3. also provides a very general overview of the anti-discrimination norms of the European Union, as the anti-discrimination norms in Finland are largely consistent with the norms in force in the EU.¹¹

After the chapter on multiple discrimination, we discuss the constitutional position of the Sámi as an indigenous people. The chapter also explains the universal human rights that also apply to all Sámi, and presents the legal instruments concerning indigenous peoples, such as the UN Declaration on the Rights of Indigenous Peoples. The legislation and rights discussed in this section also concern both Sámi persons with disabilities and Sámi persons identifying as a sexual and/or gender minorities, and therefore we discuss these groups together in the research report before the separate sections dealing with the situation of both groups of minorities independently. Since the normative basis of

¹⁰ The office of ombudsman for Equality, Tasa-arvovaltuutetun toimisto, Selvitys sukupuolivähemmistöjen asemasta, Tasa-arvojulkaisu (2012:1), p.8-9. Available at: <https://www.tasa-arvo.fi/documents/10181/34936/Selvitys+sukupuolivahemmistojen+asemasta.pdf/4c84618f-8c6c-484f-a7e5-bfda8d06e9a6>.

¹¹ See also chapter 3.1. in this report.

fundamental rights are the same for both groups, it is not possible to avoid some repetition, as we have attempted to write the research report in such a way that the chapters for both minorities can be read as separate entities.

The main analysis of the study is concentrated in the independent chapters concerning Sámi persons with disabilities and Sámi persons identifying as a sexual and/or gender minority. First, we discuss the implementation of the human rights of Sámi persons with disabilities and the multiple discrimination they face in Finland. The chapter begins with theoretical discussion on definitions of disability. Chapter 5.1. discusses the views of indigenous peoples on disability and explains the terminology the Sámi use to describe persons with disabilities. In chapter 5.2. we describe the history of the phenomenon of disability and research on disability, and then in chapter 5.3. we highlight relevant previous research on Sámi persons with disabilities in more detail. In Finland, there has been little research on the situation of Sámi persons with disabilities, especially in the past few years, but this report presents a few relevant publications that have touched upon or discussed the topic to some extent.

Chapter 5.4. discusses the status of persons with disabilities in Finland's human rights policy at both the national and international levels. After the ratification of the UN Convention on the Rights of Persons with Disabilities in 2016, Finland's human rights policy has increasingly focused on the implementation of their rights. In chapter 5.5. we discuss the human rights of indigenous persons with disabilities, and the chapter 5.7. presents the UN Convention on the Rights of Persons with Disabilities in more detail. In addition, subsections of the chapter 5.7. explain the relationship between Finland's national legislation and the universal human rights of persons with disabilities, and the way the rights of the Sámi and the rights of persons with disabilities cross in legislation.

Following the chapter on the rights of Sámi persons with disabilities in chapter 5.8. we discuss the experiences of discrimination our informants face, and discuss situations where being Sámi and having a disability has caused experiences of intersectional discrimination. Finally, in chapter 5.9., we discuss how to prevent the discrimination Sámi persons with disabilities may face in the future, and how to mitigate suffering for those who have already faced discrimination, on the basis of suggestions gathered in the interviews conducted during the project. At

the end of the chapter, we present the conclusions and recommendations concerning multiple discrimination against Sámi persons with disabilities and the implementation of their rights.

Similarly, the chapter on Sámi persons identifying as a sexual and/or gender minority begins with theoretical reflection. It briefly presents gender theories and discusses definitions of sexuality. Subsequently, chapter 6.2. discusses the study of history of Sámi persons identifying as a sexual and/or gender minority and of the terminology used by the minority groups in question. In light of these earlier studies, Chapter 6.3. deals more deeply with the role of sexual and gender minorities in the Sámi community. The discourse of silence is overtly present in discussions surrounding LGBTIQ Sámi, both in the Sámi community and in Finnish society.

In Finland's human rights policy, sexual and gender minorities have also been increasingly prioritized for almost two decades. In particular, the elimination of discrimination against these groups has become, inter alia, an important theme in Finland's international human rights policy¹². Chapter 6.5. deals with the human rights of persons belonging to sexual and gender minorities, after which consideration is also given to the implementation of the human rights of LGBTIQ people and the challenges of their implementation in Finland's national legislation.

Chapter 6.7. examines situations described by informants during the interviews conducted for the project, where they have encountered discrimination. We then discuss ways to prevent discrimination against Sámi persons identifying as a sexual and/or gender minority in the future, and means to support those affected by discrimination. At the end of the chapter, again, there is a separate section

¹² The Ministry for foreign affairs of Finland, Suomen ulkoasiainhallinnon ihmisoikeusstrategia, Ulkoasiainministeriö, Jyväskylä: Kopijyvä Oy, (2013), p. 20. Available at: <http://formin.finland.fi/public/download.aspx?ID=115729&GUID={DD6BF865-D308-4C5B-B7F7-959D0AD65DD0}>; The Ministry for foreign affairs of Finland, Suomen ulkoasiainhallinnon ihmisoikeuspoliittinen toimintaohjelma 2013 – 2015, Ulkoasiainministeriö, Joensuu: Kopijyvä Oy, (2013), p. 13-14. Available at: <http://formin.finland.fi/public/download.aspx?ID=116041&GUID={D0D4D53A-778C-4BBF-A808-D57DB8F206E4}>. See also the chapter 6.4. of this report

presenting the conclusions and recommendations made based on the entire chapter.

An appendix at the end of the Finnish version of this report introduces supervisory authorities and organisations that are relevant to persons with disabilities and to members of sexual and gender minorities¹³. This is intended for use particularly by representatives of members of the internal minorities themselves, and contains basic information about where to turn in different situations and with different questions. The appendices also contain the templates used for the agreements regarding the use of interview materials collected in individual interviews as research material¹⁴.

1.2. Parties responsible for the project

The leader of the project was Doctor of Law *Leena Heinämäki*, senior researcher at the Northern Institute for Environmental and Minority Law of the Arctic Centre at the University of Lapland. She has conducted extensive research on indigenous peoples' rights for many years. Her doctoral dissertation (2010) concerned the environmental human rights of indigenous peoples, and in particular, those related to traditional livelihoods and participation. Heinämäki also acted as the responsible leader and one of the main authors in a study commissioned by the Finnish Government on *Saamelaisten oikeuksien toteutumisen: kansainvälinen vertaileva tutkimus* (2017) (*Actualizing Sámi Rights in Finland: International Comparative Research*). In this research report, Heinämäki was responsible for writing the legal sections. The principal researcher in the project was M.Soc.Sc *Laura Olsén*, researcher at the Northern Institute for Environmental and Minority Law of the Arctic Centre. She was also a researcher and one of the main authors for the project report *Saamelaisten perinnetiedon huomioiminen ympäristöpäätöksenteossa* (*Incorporating Sámi traditional knowledge in environmental decision-making*)¹⁵ and participated in

¹³ Appendix 1 in the Finnish language report.

¹⁴ Appendices 2 and 3 in the Finnish language report.

¹⁵ Olsén, Laura, Harkoma, Assi, Heinämäki, Leena & Heiskanen, Heta, *Saamelaisten perinnetiedon huomioiminen ympäristöpäätöksenteossa*, *Juridica Lapponica* 41, Rovaniemi:

the aforementioned study commissioned by the government. She is writing her dissertation about the state of human security in the Sápmi area. In this study, Olsén was responsible for carrying out the interviews, for their transcription and for the organisation of the workshops. In addition, she wrote the chapters on discrimination and experiences of discrimination, as well as the theoretical background on the chapters on Sámi persons with disabilities and Sámi persons identifying as a sexual and/or gender minorities. *Assi Harkoma*, research assistant in the Northern Institute for Environmental and Minority Law also participated in this research project. She has carried out research work for the development of Sámi rights and the Akwé:Kon process, and worked actively on human rights issues. Harkoma participated in the writing of the aforementioned report on traditional knowledge, and she wrote a report on fundamental and human rights research for the Finnish Human Rights Centre (2017). Harkoma played a key role in the design of this research project and she wrote the part of the report on supervisory bodies and organisations that can be found in the original Finnish version of this report. *Maija Myllylä* and *Joëlle Klein* translated the study report into English and *Arla Magga* into North Sámi.

The project was carried out in full by the Northern Institute for Minority and Environmental Law of the Arctic Centre at the University of Lapland, and funded by the Ministry of Foreign Affairs, Unit for Human Rights Policy. The eight informants of the project and the executive director of the SámiSoster association, *Ristenrauna Magga* played an important role in the implementation and the success of the project. In addition, researcher at the University of Lapland, D.Soc.Sc *Liisa Hokkanen* was an important cooperation partner through the entire research project. We express a deep gratitude to all who participated in the process of this research.

Lapin yliopistopaino (2017). The report is part of a project by the same name (Incorporating Sámi traditional knowledge in environmental decision-making), funded by the Nessling Foundation.

2. Method used in the study

This study is a combination of legal analysis and social science research. The legal dogmatic part consist of an interpretation of norms, government bills, statements of working groups and committees, legal case and literature analysis as well as considerations of recommendations of human rights monitoring bodies.

The methodological starting point of this study stems from the ideology of community-based participatory research methods.¹⁶ The broader frame of reference on the rights of minorities within minorities was based on and formulated during previous projects the researchers have carried out among persons belonging to the Sámi community. Subsequently, the research was conducted in close cooperation with the people of the Sámi community and later with Sámi persons with disabilities and experts in their issues, as well as with Sámi persons belonging to sexual and gender minorities.

The community-based participatory research method is a natural choice for the method of this study, because it is well suited for research carried out in indigenous communities. This method assists persons from outside the community to get a comprehensive picture of the community that is the object of the study, and to better understand the community, its culture, and special cultural characteristics. Using this method, the researcher can also understand more clearly the views that differ from western ways of thinking. The community-based participatory research method blurs the traditionally clear roles of the researcher and the representatives of the community under study that are often upheld, especially in the western research community. During the study, the partnership between the researcher and the object of study enhances, and the idea is that information flows in both directions.¹⁷ The representatives of the indigenous community teach the researcher their own cultural characteristics, and

¹⁶ On the community-based participatory method in general, see e.g. Pontes Ferraria, Maria & Gendron, Fidji, “Community-based participatory research with traditional and indigenous communities of the Americas: Historical context and future directions”, *International Journal of Critical Pedagogy*. 3(3) (2011): p. 153-168; Olsén, Laura, Harkoma, Assi, Heinämäki, Leena & Heiskanen, Heta, Saamelaisten perinnetiedon huomioiminen ympäristöpäätöksenteossa, *Juridica Lapponica* 41, Rovaniemi: Lapin yliopistopaino (2017), p. 13-18.

¹⁷ Pontes Ferraria & Gendron (2011), p. 157; Olsén et al. (2017), p. 13.

for example in this study, the researchers have shared and added to information on the rights of the minority groups studied. Information, for example in this study concerning the experiences of discrimination, is generated together with representatives of the community that is the object of the study, and they participate in the implementation of the study through all of its phases.¹⁸

As noted, in this research the ideology of community-based and participatory research has been present since the beginning of the study. Before selecting the internal minorities of the Sámi community, the researchers in the project actively talked with the representatives of the Sámi community to ask what internal minorities the community would need more information about. Based on these discussions, Sámi persons with disabilities and Sámi persons identifying as sexual and/or gender minorities were selected as the internal minorities to study. Before beginning the interviews, the researchers planned the research questions together with representatives of the Sámi community and with a representative of the minority group to be studied.

After selecting the groups, we started to seek informants using the so-called snowball sampling method. The snowball method is particularly suitable for situations where informants may not be easy to find. It is based on the idea that, after finding the first informant, they are asked about the next potential informant, and thus the number of informants will grow every time a new informant is found. However, this method can be criticised because each informant can direct the researcher only to the persons they know, and there is a risk that the results will not provide a sufficiently diverse picture of the situation.¹⁹ In order to avoid this, it is also important to find informants who do not know each other²⁰. In the course of this study, the first interviewees were already mapped in the preliminary discussions with representatives of the Sámi community. In particular, informants representing Sámi people with disabilities were difficult to find, as for example, representatives of organisations working with them have a confidentiality obligation.

¹⁸ Pontes Ferraria & Gendron (2011), p. 157; Olsén et al. (2017), p. 13.

¹⁹ Hokkanen, Liisa, Experiences of inclusion and welfare services among Finnish Sámi with disabilities, Nordic Welfare Centre (2017), p. 30.

²⁰ Heckathorn, Douglas D. "Respondent-Driven Sampling: A New Approach to the Study of Hidden Populations", *Social Problems* 44(2), (1997), p. 174-199.

The project involved interviewing three people with disabilities and one person working in cooperation with Sámi persons with a disability, with whom active dialogue took place on several occasions. Due to the wide-ranging expertise of the expert, the study of Sámi people with disabilities reflects in a relatively comprehensive way both general challenges and challenges faced by Sámi persons with disabilities in particular where equality is not adequately implemented. The aim was to organise a workshop for Sámi people with disabilities in Sajos in Inari²¹ to collectively discuss various experiences of discrimination experienced by people. In addition, the aim was to consider how to prevent discrimination against Sámi persons with disabilities in the future and help those already affected by discrimination. However, there were no participants in the workshop, so we cannot use it in the analysis of this research report. As there was just a small number of interviews, we also used the results of research report *Experiences of inclusion and welfare services among Finnish Sámi with disabilities* published in November 2017 on research project by Liisa Hokkanen. Hokkanen interviewed nine persons with a disability for their study.²² Their research project ran concurrent with this study and the researchers in the respective projects communicated actively on the theme during the whole research process. Because Hokkanen's report was not yet published during the finalizing period of this project, it is not analysed extensively in this study, but rather it is used to provide examples to explore questions related to discrimination.

In addition, on December 14, 2017 in Inari, Sajos, we organized a seminar on the theme of the project: *Saamelaisten vammaisten henkilöiden ihmisoikeudet ja niiden toteutuminen 100-vuotiaassa Suomessa (The human rights of Sámi persons with disabilities and their implementation in 100-year-old Finland)*. In addition to Sámi persons with disabilities, other representatives of the Sámi community, various authorities and researchers were also invited to the seminar to discuss the implementation of the UN Convention on the Rights of Persons with Disabilities in Finland, and to share information and views between different actors. The aim was to increase awareness among Sámi persons with disabilities

²¹ The workshop was planned for May 11, 2017 between 17.00-20.00 hours.

²² Hokkanen (2017), p. 43-65.

about their human rights and among authorities about the challenges Sámi persons with disabilities face in their everyday life.

A total of five informants were interviewed for the project among representatives of Sámi persons identifying as sexual and/or gender minorities. Additionally, two separate workshops were organised for Sámi representatives of sexual and/or gender minorities during the project. The workshop participants discussed the discrimination faced by Sámi representatives of sexual and gender minorities in both the Finnish society and the Sámi community. In addition, consideration was given to discussing ways to promote the situation of these minority groups in the future and to help those already affected by discrimination. The first workshop was held in Sajos in Inari on May 3, 2017, and all the participants in the workshop attended the event via remote access. Another workshop was held in Inari at Hotel Kultahovi on August 17, 2017 as part of the Sápmi Pride event.

The researchers have also been in contact with some interviewees after the interviews and workshops and, among other things, checked the written analysis together with them. People who have checked the texts have had the opportunity to add things and suggest corrections to the texts. Thus, this study has sought to ensure that it is as close as possible to the actual situation of minorities within a minority and their experiences of discrimination.

2.1. Collection and processing of materials

In our project, we collected information from the minorities within a minority through semi-structured individual and group interviews. In this study we use the term semi-structured interview rather than theme interview, because in the interviews we used clear, prepared questions that were asked of all the informants. The order of the questions could change and the interviewer sometimes asked the informants for precisions with extra questions.²³

²³ See generally on semi-structured and theme interviews e.g. Hirsijärvi, Sirkka & Hurme, Helena, Tutkimushaastattelu, Teemahaastattelun teoria ja käytäntö, Gaudeamus Helsinki University Press (2008), p. 47-48.

The interviews with the Sámi persons with disabilities were carried out in Finnish at the interviewees' places between April 24 and August 16, 2017. The disabilities of the informants varied from physical and cognitive disabilities to sensory impairments. All the interviewees are living in the Sámi homeland, either alone or with their families. Finding a Sámi person with a disability who would agree to become an informant proved to be extremely difficult, and as the sampling was limited, in the analysis we will only discuss the discrimination faced by Sámi persons with disabilities at a general level. It should be remembered that there is a wide range of disabilities and special needs, and that our sample covers only a small part of the experiences of Sámi persons living with different disabilities.

All the informants interviewed for the part of the study on Sámi persons identifying as a sexual and/or gender minority are currently living outside of the Sámi homeland. All the individual interviews with LGBTIQ persons were also carried out in Finnish. Two of the interviews were arranged via remote access, and three were conducted in person. In addition, we organised two workshops that also could be seen as group interviews²⁴. In the workshops, discussions were based on the same questions as in the individual interviews. The discussions were very interactive, and the informants and researcher openly discussed the views of both parties. One of the workshops was conducted in English.

In this study, the informants are not in any way specified and not explicitly referred to in the text. Both the minority groups, Sámi persons with disabilities and Sámi persons identifying as sexual and/or gender minorities, are small, and in addition, they are part of a relatively small indigenous community living in Finland. There is a high risk that the informants could be identified already based on their testimony, and this would compromise the anonymity of the informants. For this reason, the researchers have decided to follow the aforementioned practice throughout the report.²⁵ In order to protect the anonymity of informants in this study, the report does not, for example, define the age or gender of the informants. However, all informants have reached the age of majority. Nor do we define more precisely, for example, in which localities the informants live or

²⁴ See generally on group interviews e.g. Hirsijärvi & Hurme (2008), p. 61-63.

²⁵ See also Olsén et al. (2017), p. 17.

which of the three Sámi languages they may speak. In the case of Sámi persons with disabilities, we do not, for the above reason, specify what kind of disabilities or special needs the informants are living with.

With each individually interviewed informant, we have drafted a separate agreement on the use of the interview material as research material²⁶. The researcher has also transcribed the interviews and removed any identifying information from the transcribed material. The materials are archived electronically in accordance with the archiving practices of the Arctic Centre at the University of Lapland, so that even in the future, no one may gain access to them except the researchers in this project for eventual follow-up studies.

²⁶ Appendices 2 and 3 in the Finnish language version of this report.

3. Multiple discrimination

This study report focuses on the rights of minority groups within minorities, and on the multiple discrimination faced by these minority groups.²⁷ Multiple discrimination is a broad and multifaceted phenomenon, and can be described in different contexts, using different concepts. Concepts such as multiple discrimination, intersectional discrimination or cumulative discrimination are often used as synonyms, despite their subtle differences in meaning.²⁸ In literature or in legal systems, there are no officially established terms to discuss the phenomenon, but Makkonen (2002), for example, notes that intersectional discrimination is the most frequently used term in academic circles, while the human rights field refers to multiple discrimination²⁹. International actors such as the EU often use the term multiple discrimination, even when referring to problems in the field of intersectional discrimination.³⁰ However, Lawson and Schiek (2011) note that the importance of intersectionality has become

²⁷ In Finnish text both the term multiple discrimination and discrimination *on multiple grounds* (if translated literally from the Finnish language) are used. In this report we have decided to refer to the phenomenon with the words multiple discrimination, as this is the version used also in the documents of Finnish Foreign Service, such as Finland's Human Rights Strategy, Ministry for Foreign Affairs, Ulkoasiainministeriö, Jyväskylä: Kopijyvä Oy, (2013), p. 20. Available at: <http://formin.finland.fi/public/download.aspx?ID=115729&GUID={DD6BF865-D308-4C5B-B7F7-959D0AD65DD0}>.

²⁸ Makkonen, Timo, Multiple, compound and intersectional discrimination: bringing the experiences of the most marginalised to the fore, Åbo Akademi University, Institute For Human Rights, (2002), p. 9-10; Fredman, Sandra, Intersectional discrimination in EU gender equality and non-discrimination law, European Commission, European network of legal experts in gender equality and non-discrimination (2016), p. 27. See also e.g. Anttila, Outi, "Hunnuttautuneet musliminaiset moniperusteisen syrjinnän symboleina", *Naistutkimus*, 23(2010):4, p. 20; Anttila, Outi & Nousiainen, Kevät, Selvitys tasa-arvolain valvontasäännösten toimivuudesta, Sosiaali- ja terveystieteiden ministeriö, Helsinki (2013), p. 16.

²⁹ Makkonen (2002), 10. See also Fredman 2016, 27.

³⁰ Schiek, Dagmar & Lawson, Anna, "Introduction", in Schiek, Dagmar & Lawson, Anna (eds), *European Union non-discrimination law and intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination*, Taylor & Francis (2011), p. 3. See also Burri, Susanne & Schiek, Dagmar, *Multiple Discrimination in EU Law, Opportunities for legal responses to intersectional gender discrimination*, European network of legal experts in the field of gender equality, European Commission (2009), p. 4. Available at: http://ec.europa.eu/justice/gender-equality/files/multiplerediscriminationfinal7september2009_en.pdf

increasingly recognised in the UN and EU institutions³¹. The European Commission publication titled '*Intersectional discrimination in EU gender equality and non-discrimination law*' (Fredman 2016) is one example of this. Since this research report is strongly focused on a human rights-based approach, and in the documents of Finnish Foreign Service, such as the Human Rights Strategy of the Foreign Service (2013) the term “multiple discrimination”³² is used, we also find it justified to use the term multiple discrimination in this study.

3.1. Definitions of discrimination

In defining multiple discrimination, it is essential at the outset to clarify how discrimination is understood in this research report. Discrimination is primarily examined through the definitions used in international law and in Finnish law, and is also discussed in the legal sections of this report. In addition, the analysis of the study also covers situations that are not necessarily considered prohibited discrimination in existing legislation, but which our interviewees found somehow uncomfortable or unequal. There are a number of definitions for the concept of discrimination in general, and they vary in different disciplines and contexts. There is no singular legal definition for discrimination, and definitions also vary in national laws and even within national legal systems. Yet, at the core of the principle of non-discrimination, we can see equality, which is also one of the cornerstones of human rights.³³ As the UN Universal Declaration of Human Rights notes:

*”All human beings are born free and equal in dignity and rights. [...]”*³⁴

³¹ Schiek & Lawson (2011), p. 3.

³² The Ministry for foreign affairs of Finland, Suomen ulkoasianhallinnon ihmisoikeusstrategia. Ulkoasiainministeriö, Jyväskylä: Kopijyvä Oy, (2013), p. 20. Available at: <http://formin.finland.fi/public/download.aspx?ID=115729&GUID={DD6BF865-D308-4C5B-B7F7-959D0AD65DD0}>.

³³ Makkonen (2002), 1-4.

³⁴ A/RES/3/217 A, UN Universal Declaration of Human Rights, Article 1.

*”Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*³⁵

Finland's current legislation on discrimination strongly reflects the legal principles of the European Union. For example, the concepts of indirect and direct discrimination as defined by Finnish legislation are based on the definitions used in the directives of the EU Council.³⁶ In Section 6 of the Constitution, equality is defined as people's fundamental right³⁷. The Non-discrimination Act lists age, origin³⁸, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics as grounds for discrimination.³⁹ In addition, the Act on Equality between Women and Men also separately lists grounds relating to gender, pregnancy or childbirth, as well as gender identity and gender expression, as grounds for discrimination⁴⁰. However, it is important to note that the grounds and forms of discrimination have changed

³⁵ Ibid., Article 2.

³⁶ Government Bill, HE 19/2014, Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräiksi siihen liittyviksi laeiksi, p. 70,76; Heiskanen, Tapani, Yhdenvertaisuus työelämässä, Tutkielma, Turun yliopisto, Oikeustieteellinen tiedekunta (2012), p. 12-16. See e.g. Council Directive 2000/43/EC. See generally also Ahtela, Karoliina, Bruun, Niklas & Koskinen, Pirkko K. Tasa-arvo ja yhdenvertaisuus, Helsinki: Alma Talent (2006), p. 17.

³⁷ Constitution of Finland 11.6.1999/731, 6 §. *”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. Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development. Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.”*(11.6.1999/731, 6 §.)

³⁸ In the amended Non-discrimination Act the expression ethnic or national origin was replaced by the term origin that is also used in Section 6 of the Constitution of Finland that also refers to ethnic, national and social origin. It also covers race and color mentioned in the Criminal Code.(HE 19/2014, 66). See also Constitution of Finland 11.6.1999/731, 6 §; HE 309/1993; Criminal Code 19.12.1889/39, 11 §.

³⁹ Non-discrimination Act 1325/2014, 8 §.

⁴⁰ Act on Equality between women and men, 8.8.1986/609, 7 §. Complemented concerning sexual identity and gender expression 30.12.2014/1329.

alongside societies⁴¹. For this reason, the above list is not comprehensive, but does provide a number of grounds for discrimination existing in Finnish society today.

In addition to different grounds, discrimination can also occur in various forms, such as *direct, indirect or structural discrimination, denial of reasonable accommodation, as an instruction or order to discriminate* or as *harassment*.⁴² *Multiple discrimination* is not specifically mentioned, for example, in the Non-discrimination Act⁴³ or in the Act on Equality between Women and Men⁴⁴, but is raised on several occasions in the government bill for the legal reform of these laws⁴⁵. Furthermore, the government bill states that as the National Non-Discrimination and Equality Tribunals were merged in conjunction with the legislative reform, this will improve the possibilities for this legal body to address multiple discrimination.⁴⁶ Researcher Johanna Kantola commented on the need to consider multiple discrimination in 2008, in giving her opinion on the interim report of the Non-discrimination Committee on the need to and alternatives for the reform of the equality and non-discrimination.⁴⁷

In Section 10 of the Non-discrimination Act, direct discrimination refers to a situation in which a person on the basis of personal characteristics is treated less favourably than another person was treated, is treated, or would be treated in a comparable situation. Adverse treatment, in turn, refers to such practice, such as an act or omission, which places the person at a disadvantage compared to

⁴¹ See e.g. SEIS-projekti, Sosiaali- ja terveydenhuolto ja syrjintä, p. 9. Available at: <https://yhdenvertaisuus-fi-bin.directo.fi/@Bin/30c96d1a00d8cc86e2ba16c6e6a6dabb/1509358262/application/pdf/115079/SEIS-soster.pdf>. See also Makkonen, Timo, *Syrjinnän vastainen käsikirja*, International Organization for Migration, Regional Office for the Baltic and Nordic States, Vammala: Vammalan Kirjapaino Oy (2003), p. 12.

⁴² Makkonen (2002), 4; SEIS-projekti, p. 4.

⁴³ Non-discrimination Act 1325/2014.

⁴⁴ Act on Equality between women and men, 8.8.1986/609.

⁴⁵ The Government Bill, HE 19/2014, Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräksi siihen liittyviksi laeiksi..

⁴⁶ The Government Bill, HE 19/2014, Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräksi siihen liittyviksi laeiksi, p. 36.

⁴⁷ Kantola, Johanna, *Lausunto koskien yhdenvertaisuustoimikunnan välimietintöä: Tasa-arvo- ja yhdenvertaisuuslainsäädännön uudistustarve ja -vaihtoehdot* (2008).

others.⁴⁸ Section 7 of the Act on Equality between Women and Men defines direct gender-based discrimination as treating women and men differently on the basis of gender; treating someone differently for reasons of pregnancy or childbirth; or treating someone differently on the basis of gender identity or gender expression.⁴⁹

Indirect discrimination as defined in Section 13 of the Non-discrimination Act refers to a situation in which an apparently neutral rule, criterion or practice puts a person at a disadvantage compared to others on the grounds of personal characteristics, unless the rule, criterion or practice has a legitimate aim and the means for achieving the aim are appropriate and necessary. Putting a person at a disadvantage refers to actions whereby a person belonging to a group on the basis of personal characteristics is exposed to a particular restriction, requirement, burden, obligation or other disadvantage compared to others.⁵⁰ According to Section 7 of the Act on Equality between Women and Men, indirect discrimination means treating someone differently by virtue of a provision, criterion or practice that appears to be gender-neutral in terms of gender, gender identity or gender expression, but where the effect of the action is such that the persons may actually find themselves in a less favourable position because of their gender. In addition, indirect discrimination in this law also covers treating someone differently based on parenthood or family responsibilities.⁵¹

Refusing reasonable accommodation refers to the reasonable adjustments described in section 15 of the Non-discrimination Act to implement the equality of people with disabilities⁵². It stipulates that the authority, education provider, employer or provider of goods and services has to make due and appropriate adjustments necessary in each situation, for a person with disabilities to be able, equally with others, to deal with the authorities and gain access to education, work, and generally available goods and services, as well as to manage their work

⁴⁸ Government Bill, HE 19/2014, p. 69-70. Non-discrimination Act 1325/2014, 10 §.

⁴⁹ Act on Equality between women and men, 8.8.1986/609, 7 §. Complemented concerning sexual identity and gender expression 30.12.2014/1329.

⁵⁰ The Government Bill, HE 19/2014, 76. Non-discrimination Act 1325/2014, 13 §.

⁵¹ Act on Equality between women and men, 8.8.1986/609, 7 §. Complemented concerning sexual identity and gender expression 30.12.2014/1329.

⁵² The Government Bill, HE 19/2014, 69. Non-discrimination Act 1325/2014, 15 §.

tasks and to advance their career.⁵³ In the drafting process of this section, the provisions on reasonable accommodation present in EU directives on work discrimination and the UN Convention on the Rights of Persons with Disabilities were also taken into account. According to the proposal, adaptation must always be appropriate in each situation and the adjustments are case-specific in nature. They must therefore respond to the needs of the person with disabilities in the specific situation in question. The measure is necessary, for example, in situations where a service would not be accessible to a person with a disability without accommodation in the same way as it is available to others. In the accommodation, it is essential that, for example, certain services are available to a person with a disability, but the services are not required to be exactly the same as for other people.⁵⁴

Instructions or orders to discriminate in the Non-discrimination Act mean, for example, guidance, instructions or obligations relating to discrimination. However, it is presupposed that the instructors have the authority or status to issue mandatory instructions or orders to the recipient. Even if the recipient of an order or instruction does not comply with it, any given instruction or order issued in a position of authority may, however, be regarded as discrimination. In this Act, an instruction or order to discriminate does not, however, apply to orders or instructions given by a person other than the persons in position of authority described above.⁵⁵ In the Act on Equality between Women and Men, an instruction or order to practice discrimination on the basis of gender is also considered discrimination as referred to in the said Act⁵⁶.

Harassment in the Non-discrimination Act refers to intentional or actual offending behaviour in a situation where the offending behaviour is connected to any of the reasons listed above with the grounds of discrimination, and this conduct creates a degrading, humiliating, threatening, hostile, or offensive environment for the aforementioned reasons.⁵⁷ The Act on Equality between

⁵³ Non-discrimination Act 1325/2014, 15 §.

⁵⁴ The Government Bill, HE 19/2014, p. 79.

⁵⁵ The Government Bill, HE 19/2014, p. 69.

⁵⁶ Act on Equality between women and men, 8.8.1986/609, 7 §. Complemented concerning sexual identity and gender expression 30.12.2014/1329.

⁵⁷ Non-discrimination Act 1325/2014, 14 §.

Women and Men defines more precisely what is meant by sexual harassment and harassment based on gender. Sexual harassment refers to unwanted verbal, non-verbal or physical conduct of a sexual nature by which a person's psychological or physical integrity is violated intentionally or factually, in particular by creating an intimidating, hostile, degrading, humiliating or offensive atmosphere. Gender-based harassment, in turn, refers to unwanted conduct that is not of a sexual nature but which is related to the gender of a person, their gender identity or gender expression, and by which the person's psychological or physical integrity is intentionally or factually violated and an intimidating, hostile, degrading, humiliating or offensive atmosphere is created.⁵⁸ Recently, there has also been a lot of discussion about hate speech, which can be seen as an overlapping concept with harassment, although it is not specifically defined in the aforementioned laws. In some cases, hate speech may also have been interpreted as one dimension of harassment, even if this is not clearly defined in legislation either.⁵⁹ However, hate speech came up in the interviews of this study, which is why it is specifically mentioned here.

In addition to the above-mentioned forms of discrimination, as outlined in the Non-discrimination Act and the Equality Act, the concept of structural discrimination is particularly relevant to this report. Perceiving its effects is relatively common among the minorities within minorities that are the focus of this study. Specifically, the term describes discrimination that exists in the structures of society and disadvantages a certain group of people. Structural discrimination occurs in legislation, services and in different agreements.⁶⁰ Structural discrimination is often fairly invisible in societies, which makes it

⁵⁸ Act on Equality between women and men, 8.8.1986/609, 7 §. Complemented concerning sexual identity and gender expression 30.12.2014/1329.

⁵⁹ Korhonen, Nita, Jauhola, Laura, Oosi, Olli & Huttunen, Hannu-Pekka, "Usein joutuu miettimään, miten pitäisi olla ja minne olla menemättä", Selvitys vihapuheesta ja häirinnästä ja niiden vaikutuksista eri vähemmistöryhmiin, Oikeusministeriö, Selvityksiä ja ohjeita (7/2016), p. 22-24.

⁶⁰ SEIS project, p. 4.

difficult to address. The development of the concept of indirect discrimination has, however, helped to address structural discrimination.⁶¹

3.2. Definitions of Multiple Discrimination

On a general level, multiple discrimination refers to discrimination that can affect an individual on a variety of grounds.⁶² If we take the example of the minority groups within minorities in this report, a transgender Sámi woman residing in Finland and living with a disability, could be discriminated against because of their ethnic background, gender, gender identity, and disability. In such a case, discrimination faced by the person would result in cumulative disadvantages in the person's life⁶³. In literature, when discussing the concept of multiple discrimination, the Beijing Declaration and Action Program adopted by the UN Conference on Women's Rights on September 15, 1995, is often raised. The Declaration is seen as one of the most important international declarations to have had a positive and stimulating impact on attracting attention to the phenomenon of multiple discrimination.⁶⁴

Multiple discrimination can be understood as an umbrella term that is often seen to cover three different basic types of multiple discrimination: *sequential multiple*

⁶¹ Heiskanen (2012), p. 15; Prechal, Sacha, "Equality of Treatment, Non-Discrimination and Social Policy: Achievements in Three Themes", *Common Market Law Review* 41: 533-551 (2004), p. 546-547.

⁶² Makkonen (2003), p. 13-14; Fredman (2016), p. 27-28; Aaltonen, Milla, Joronen, Mikko & Villa, Susan, Syrjintä Suomessa 2008, Ihmisoikeusliitto ry, Helsinki: Art-Print Oy (2009), p. 19; Makkonen (2002), p. 9-10.

⁶³ See also Fredman (2016), 27.

⁶⁴ E.g. Burri & Schiek (2009), p. 3; Fredman (2016), p. 27. Beijing Declaration Article 32: "intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, or because they are indigenous people." (Beijing Declaration and Platform for Action, United Nations (1995). Available at: <http://formin.finland.fi/public/download.aspx?ID=13656&GUID={2DA22713-FA7A-432A-B5D3-3994EEB18944}>).

*discrimination, cumulative discrimination*⁶⁵ and *intersectional discrimination*.⁶⁶ In some situations, particularly in English texts, the term multiple discrimination can also refer to *sequential multiple discrimination*, in which case it is then seen as one of the basic types of multiple discrimination⁶⁷. This definition is largely due to the discussion of the English term *multiple*⁶⁸ and its mathematical connotations⁶⁹. In this context, Fredman (2016) uses the term *sequential multiple discrimination* and therefore, in order to make a clear distinction between the terms, sequential multiple discrimination is used throughout this report as well. In Finnish-language publications, sequential multiple discrimination is translated literally as *multiple discrimination* when used to refer to one of the basic types of multiple discrimination⁷⁰. The term used to refer to multiple discrimination as an umbrella term in Finnish would be literally translated *multi-ground discrimination*.

Sequential multiple discrimination refers to discrimination where a person faces discrimination for a variety of grounds and in different situations, but discrimination occurs only on one basis at a time⁷¹. For example, in our research, a Sámi person with a disability in one situation experienced discrimination because of their ethnic background and in another situation due to their disability. In this case, we use sequential multiple discrimination to discuss how different forms of discrimination occur on different occasions and on different grounds,

⁶⁵ In English texts this can be referred to using terms additive discrimination, additive multiple discrimination, compound discrimination or cumulative discrimination (See e.g. Burri & Schiek (2009), p. 3; Fredman (2016), p. 27; Makkonen (2002), p. 10; FRA, Data in Focus Report, Multiple Discrimination, European Union Agency for fundamental Rights, EU-MIDIS (2010), p. 6; Anttila (2010), p. 20).

⁶⁶ See e.g. Aaltonen et al. (2009), p. 19-20; Fredman (2016), p. 27; Makkonen (2002), p. 10. See also Schiek & Lawson (2011), 3; Aaltonen 2010, 20; FRA (2010), p.6; Burri & Schiek (2009), p. 4.

⁶⁷ Makkonen (2002), 10; European Commission, Tackling Multiple Discrimination: Practices, policies and laws, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.4, Italy: European Communities (2007), p. 16.

⁶⁸ Finnish translation MOT Dictionary.

⁶⁹ Makkonen (2002), 10; Burri & Schiek (2009), p. 4. See also Conaghan, Joanne, "Intersectionality and the feminist project in law", in Grabham, Emily, Cooper, Davina, Krishnadas, Jane & Herman, Didi (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location*, Taylor & Francis, p. 21-48, (2008), p. 24.

⁷⁰ Aaltonen et al. (2009), p. 19.

⁷¹ Aaltonen et al. (2009), p. 19. Fredman (2016), p. 27; Makkonen (2002), 10.

but both occasions can contribute to the exclusion of the person. Fredman (2016) points out that it is easiest to tackle sequential multiple discrimination, since it is possible to show, in a given situation, the original basis of a specific act of discrimination.⁷²

We discuss cumulative discrimination when a person in a specific situation experiences discrimination on more than one ground⁷³. We can examine a hypothetical situation also discussed in one of the interviews of this study, to highlight an example of cumulative discrimination. For example, a lesbian Sámi woman could experience discrimination when pursuing traditional Sámi livelihoods, both because they are a woman and because they are a lesbian. In this case, the person could face discrimination both on the grounds of gender and on the grounds of sexual orientation, and both types of discrimination could be verified separately in the very same situation⁷⁴.

The third basic type of multiple discrimination, and the most difficult to verify, is intersectional discrimination. In intersectional discrimination, different grounds for discrimination cross and intersect each other in a certain situation and may even produce specific new forms of discrimination.⁷⁵ For example, a Sámi person with a disability may face certain kinds of discrimination that they might not face as a Finnish person with a disability, or as a Sámi person without a disability. Because they belong to both aforementioned groups, they may also encounter discrimination that is uniquely specific to a Sámi person with disabilities.

3.2.1. Intersectionality in discrimination

The roots of intersectional analysis and the concept of intersectionality in socio-legal discussion can be traced to an article published by Kimberlé Crenshaw in

⁷² Fredman (2016), 27.

⁷³ See e.g. Aaltonen et al. (2009), p. 20; Fredman (2016), p. 27; Makkonen (2002), p.10-11.

⁷⁴ See also Fredman (2016), p. 27.

⁷⁵ Aaltonen et al. (2009), 20; Fredman (2016), p. 27-28; Makkonen (2002), 11; Burri & Schiek (2009), p. 4.

1989, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. In the article, Crenshaw demonstrates how legislation, when focusing on just one ground of discrimination, overlooks the experiences of persons who are discriminated against on several grounds.⁷⁶ Crenshaw illustrates intersectional discrimination through the analogy of traffic in an intersection⁷⁷:

“Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the “intersection”, her injury could result from sex discrimination or race discrimination.”⁷⁸

Crenshaw stresses, however, that the problem lies not only in the legal structure but also in the fact that the categories on which the grounds for discrimination are based are defined based on the experiences of people in privileged positions, or persons within a particular group. Crenshaw writes that, for example, the paradigm of gender-based discrimination is usually defined through the experiences of white women, while cases of racial discrimination are often based on the experiences of black people in a privileged position. In this way, conceptions of discrimination, according to Crenshaw, have been shaped to take into account only certain privileged criteria, and at the time when their article was written, the unique experiences of discrimination faced by black women were not reflected in existing concepts.⁷⁹

In the intersectional approach, instead of examining the individual grounds of discrimination and certain groups, one can also focus on examining the power relations within society and its structures. Power relations are considered at

⁷⁶ Crenshaw, Kimberle, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”, *University of Chicago Legal Forum*, Vol. (1989), Isp.1, 151; Fredman (2016), 28. See also Schiek & Lawson (2011), p. 1-2; Burri & Schiek (2009), p. 4; Makkonen (2002), p. 9.

⁷⁷ See also Burri & Schiek (2009), 4.

⁷⁸ Crenshaw (1989), 149.

⁷⁹ Crenshaw (1989), 151. See also Fredman (2016), p. 28.

various levels, both vertically, for example in different social classes, but also diagonally as a phenomenon that traverses different groups. Fredman (2016) states that intersectionality should be looked at through power relations rather than the identities of persons.⁸⁰ Using the internal minority group in this study as an example, a Sámi man with a disability may be in a better position in society than a Sámi woman with a disability, but at a disadvantage compared to a Finn with a disability. He may also experience being disadvantaged in relation to a Sámi woman who is not categorised as a person with a disability. We can look at this situation by focusing on the power relations prevailing in the society, to help us identify and make visible the groups that are the most vulnerable in our society⁸¹.

In addition to legal discussion, the intersectional approach has spread into sociology, political science, cultural studies and women's studies⁸², and as discussed later in this report, also into queer theory and disability research. Even though the aim of the concept was originally to develop policies and legislation, today it is used also in the theories of multiple identities. The concept has also been criticized, for example, because in the modern theory of intersectionality, law is seen as a means to present identity, and does not focus on how law could help eliminate existing disadvantages.⁸³ The concept has received criticism, inter alia, for its complexity⁸⁴, and for the fact that according to feminist criticism it does not sufficiently take into account structural inequality⁸⁵.

In academic discourse in different disciplines, intersectionality is not necessarily always seen as a theoretical framework or research method. For example, Söder (2009) says that intersectionality is primarily a research approach that

⁸⁰ Fredman (2016), p. 33-34.

⁸¹ See also Fredman (2016), p. 34. See generally on the theme also Atrey, P., *Realising Intersectionality in Discrimination Law*, D Phil thesis, Oxford University (2016).

⁸² Schiek & Lawson (2011), p. 2.

⁸³ Schiek & Lawson (2011), p.2; Conaghan (2008), p. 39.

⁸⁴ Squires, Judith, "Intersecting Inequalities: Reflecting on the Subjects and Objects of Equality", *The Political Quarterly*, Vol. 79, No. 1, 53-62 (2008), p. 55. See also Schiek & Lawson (2011), p. 2.

⁸⁵ Verloo, Mike, "Multiple Inequalities, Intersectionality and the European Union", *European Journal of Women's Studies*, 13(3), 211-228 (2006), p. 214-216. See also Schiek & Lawson (2011), p. 2.

emphasizes considering different structural conditions.⁸⁶ In this study, intersectionality is used as an approach to examine the implementation of the human rights of an indigenous people and its internal minorities, as well as the discrimination they face.

3.2.2. In-group and out-group discrimination

When examining multiple discrimination more closely, it can be divided into in-group and out-group discrimination. Makkonen (2003) in the Anti-discrimination Handbook defines *out-group discrimination* as discrimination that a person encounters in society in general. It may, for example, lead to situations with serious consequences, because of the repetitive nature of out-group discrimination. *In-group discrimination* in turn refers to discrimination from a peer group, where the person is simultaneously also a member of another minority group, for example. In-group discrimination can also be very harmful to a person, because the representatives of the group who treat the person badly or unequally belong to a group that the person often wants to identify with. This kind of discrimination can occur in all communities, and Makkonen notes that “*unfortunately the experience of discrimination does not always make the members of the discriminated group sensitive to the seriousness of discrimination that takes place on other grounds*”.⁸⁷

In this report we use the division of in-group and out-group discrimination because the accounts of our informants, collected during interviews, often highlight both the discrimination they face in society, such as structural discrimination, and also the discrimination they face within the Sámi community. In such cases, it is usually a question of multiple or cumulative discrimination. Their accounts also reflect intersectional discrimination, both concerning Sámi persons with disabilities, and Sámi members of sexual and gender minorities, which we analyse separately.

⁸⁶ Söder, Mårten, “Tensions, perspectives and themes in disability studies”, *Scandinavian Journal of Disability Research*, 11:2, p. 67-81 (2009), p. 74.

⁸⁷ Makkonen 2003, 14. Citation translated by Maija Myllylä. Original citation in Finnish ” [...] *valitettavasti syrjityksi tulemisen kokemus ei aina tee syrjittyihin ryhmiin kuuluvista herkkiä muilla perusteilla tapahtuvan syrjinnän vakavuudelle.*” (Makkonen 2003, 14.) See also Aaltonen et al. (2009), p. 19-20.

3.3. On the anti-discrimination norms of the European Union

At the European level, the development of non-discrimination norms and the prohibition of discrimination have been influenced, in addition to the non-discrimination provisions in the Human Rights Conventions of the Council of Europe⁸⁸, also by EU legislation and especially their directives on discrimination. A directive is a legal act of the EU that sets a common legislative objective in all the member countries.⁸⁹ In the original Treaty Establishing the European Economic Community (1957), in order to ensure equal operating conditions for the member states, there was a regulation prohibiting discrimination based on gender in matters relating to employment.⁹⁰ Until the year 2000, the anti-discrimination legislation was only applied in matters relating to employment and social security, however, and it only covered discrimination based on gender.⁹¹

The original treaties of the European Communities did not refer to human rights or to protecting them because the creation of a free trade area in Europe was not considered to have any effect on human rights.⁹² When actions began to be brought before the European Court of Justice (ECJ) with claims that the Community laws had led to violations of human rights, the ECJ developed a set of jurisprudence, which is called the general principles of Community law.⁹³ The Court of Justice of the European Communities (ECJ) has been named the Court of Justice of the European Union since the entry into force of the amendments to

⁸⁸ The human rights conventions promoting equality and non-discrimination are the European Convention on Human Rights (1950); European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987); European Charter for Regional or Minority Languages (1992); Framework Convention for the Protection of National Minorities (1995); Revised European Social Charter (1996); Convention on Action against Trafficking in Human Beings (2005); Convention on preventing and combating violence against women and domestic violence (2011). See in more detail chapter 4.2.1.

⁸⁹ See European Union, EU law, https://europa.eu/european-union/eu-law/legal-acts_fi.

⁹⁰ Treaty establishing the European Economic Community, document 11957e/TXT.

⁹¹ Handbook of European Anti-Discrimination Law, European Union Agency for Fundamental Rights, Council of Europe, 2010, p. 14.

⁹² Ibid.,15.

⁹³ Ibid.

the Treaty of Lisbon.⁹⁴ According to the Court of Justice, these general principles are in line with the human rights protections that are included in the content of national constitutions and human rights conventions, in particular the European Convention of Human Rights.⁹⁵ In its case law, the Court has confirmed that all sources of fundamental rights support the existence of the principle of equality and non-discrimination.⁹⁶

Article 13 of the Treaty establishing the European Community, as amended by the 1997 Amsterdam Treaty, states that the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may, within the limits of the powers conferred to the Community, take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, without prejudice to the other provisions of the Treaty.⁹⁷ Under this article, it became possible to establish binding norms to promote equality and prohibit discrimination.⁹⁸

In 2000, the EU and its Member States proclaimed the Charter of Fundamental Rights of the European Union, which contains a list of human rights based on the rights enshrined in the Constitutions of the Member States, the European Convention of Human Rights and universal human rights conventions.⁹⁹ The provisions of the Charter of Fundamental Rights pertain to the institutions and bodies of the EU in accordance with the principle of subsidiarity and the Member States when they apply EU law.¹⁰⁰

⁹⁴ Lisbon Treaty is the most recent Treaty of the European Union. It entered into force on 1.12.2009. The purpose of the new treaty was to simplify and clarify the Union's decision-making. The agreement complements previous treaties.

⁹⁵ Handbook of European Anti-Discrimination Law, p. 15.

⁹⁶ Bell, Mark, *Anti-Discrimination Law and the European Union*. New York: Oxford University Press 2002, p. 21.

⁹⁷ See in more detail The Government Bill, HE 245/1997, Hallituksen esitys Eduskunnalle Euroopan unionista tehdyn sopimuksen, Euroopan yhteisöjen perustamissopimusten ja niihin liittyvien tiettyjen asiakirjojen muuttamisesta tehdyn Amsterdamin sopimuksen eräiden määräysten hyväksymisestä.

⁹⁸ *Syrjinnän vastainen käsikirja*, Kansainvälinen siirtolaisuusjärjestö IOM Baltian ja Pohjoismaiden aluetoimisto, Timo Makkonen, Vammalan kirjapaino Oy, Vammala 2003, p. 69.

⁹⁹ European Charter of Fundamental Rights, 2000/C 364/01.

¹⁰⁰ Article 5(1).

Article 21(1) of the Charter contains a comprehensive anti-discrimination clause prohibiting any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

This article contains a number of progressive elements, such as an extensive list of explicitly mentioned grounds for discrimination.¹⁰¹ It explicitly mentions seventeen grounds of discrimination, and mentions, inter alia, disability, sexual orientation, age and genetic features which are not mentioned, for example, in the European Convention on Human Rights.¹⁰²

The provision does not prohibit all distinctions, but specifically differentiation that is considered discriminatory. Therefore, in principle, positive discrimination is allowed. In the interpretation of the Article, it is possible to refer, mutatis mutandis, to the interpretation of Article 14 of the European Convention of Human Rights (ECHR)¹⁰³, because the said provision was used as a basis of the formulation of Article 21(1).¹⁰⁴ Article 14 of the ECHR notes that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Article 14 is not a general prohibition of discrimination, but relates to the rights and freedoms recognised by the ECHR, including the rights and freedoms recognised in the Protocols.¹⁰⁵ Article 14 may be applied where the facts of the case fall within the scope of one or more of the substantive articles of the Convention.¹⁰⁶

¹⁰¹ Syrjinnän vastainen käsikirja (2003), p. 68.

¹⁰² Ibid.

¹⁰³ European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms) as amended by the provisions of Protocol No. 11 (SopS 85-86/1998), 63/1999.

¹⁰⁴ Syrjinnän vastainen käsikirja, 2003, p. 68.

¹⁰⁵ Pellonpää, Matti, Euroopan ihmisoikeussopimus, Helsinki, Lakimiesliiton kustannus 1996, p. 435.

¹⁰⁶ European Court of Human Rights noted this in *Abdulaziz, Cabales and Balkandi v. United Kingdom*, Judgement of 18 May 1985, Series A, No. 94; (1985) 7 EHRR 471. See Syrjinnän vastainen käsikirja (2003), p. 59.

When the Treaty of Lisbon came into force in 2009, the status of the Charter of Fundamental Rights of the European Union changed and it became legally binding, obliging the EU institutions to comply. EU Member States are also obliged to comply with the Charter, but only when implementing EU legislation.¹⁰⁷

In 2000, two anti-discrimination directives were adopted: a directive concerning equal treatment in employment, which prohibits discrimination on grounds of sex, orientation, religion, age and disability¹⁰⁸, and a directive, which prohibits discrimination based on race or ethnic origin in matters relating to working life, social protection and access to goods and services.¹⁰⁹ A non-discrimination directive was adopted in 2004 on the implementation of the principle of equal treatment between men and women in the access to and supply of goods and services.¹¹⁰

The different scopes of application of the directives have always made it difficult to harmonize and account for multiple discrimination.¹¹¹ The Racial Equality Directive (2000) specifically also applies to matters outside working life, such as education, social security and health services as well as goods and services.¹¹² The Employment Equality Directive (2000) applies only to working life and vocational training.¹¹³ The 2004 Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services does not concern matters relating to employment and occupation, and it is not applied to the content of media and advertising, nor to training.¹¹⁴ The newer, 2006 Directive on the implementation of the principle of equal

¹⁰⁷ Handbook of European Anti-Discrimination Law (2010), p. 16

¹⁰⁸ Council Directive 2000/78/EC, of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, Art. 12.

¹⁰⁹ Council Directive 2000/43/EC, of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

¹¹⁰ Council Directive 2004/113/EC, of 13 December 2004, implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

¹¹¹ See Art. 3,1 and 3,3. See Burri, Susanne, Schiek, Dagmar, Multiple Discrimination in EU Law, Opportunities for legal responses to intersectional gender discrimination?, European network for legal experts in the field of gender equality, European Commission, 2009, p. 2.

¹¹² 2000/43/EC, Article 3 scope of application.

¹¹³ 2000/78/EC, Article 3 scope of application.

¹¹⁴ 2004/113/EC, Article 3 scope of application.

opportunities and equal treatment of men and women in matters of employment and occupation¹¹⁵ sought to strengthen the protection of gender equality as part of the legislation on discrimination.¹¹⁶ The 2006 Directive also recognises discrimination based on gender reassignment.¹¹⁷ It applies to work-related issues, including social security and vocational training.¹¹⁸

As a result of the different scopes of application of the directives, the discrimination criteria of race and ethnic background have a stronger status than gender, which is in turn stronger than age, disability, sexual orientation or religion.¹¹⁹ As Burri and Schiek point out, integrating the factual overlap between these different fields has become a challenge for the application of EU law, and it remains unresolved. Gender-based discrimination does not occur only as separate discrimination, but it is experienced for instance by women who are additionally discriminated against on other grounds such as race and ethnicity, age, disability, sexual orientation or religion at the same time.¹²⁰

Although the EU directives relating to equality and non-discrimination do not include a prohibition of multiple discrimination, the phenomenon is referred to especially concerning women in the two previously mentioned directives issued in 2000.¹²¹ Legal literature has also suggested that an appropriate interpretation

¹¹⁵ European Parliament and Council Directive 2006/54/EC, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

¹¹⁶ Burri, Susanne, Schiek, Dagmar, Multiple Discrimination in EU Law, Opportunities for legal responses to intersectional gender discrimination?, European network for legal experts in the field of gender equality, European Commission, 2009, p. 2.

¹¹⁷ Para 3.

¹¹⁸ 2006/54/EC.

¹¹⁹ Fredman, Sandra (2016), p. 63.

¹²⁰ Burri, Susanne, Schiek, Dagmar (2009), p. 2.

¹²¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, preamble 14: In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, preamble 3, includes a similar formulation.

of EU legislation on equality and discrimination would lead to the inclusion and prohibition of multiple discrimination.¹²²

The European Commission sought to promote the identification of multiple discrimination by commissioning a study on *Tackling Multiple Discrimination: Practices, Policies and Laws (2007)*. The study notes that in principle, EU legislation on discrimination and equality in the workplace allows for the recognition of multiple discrimination. Points 2, 3 and 10 of the preamble to Directive 2000/78 / EC on equal treatment in employment and occupation indicate that it is intended to be read together with other EU Directives such as the Racial Equality Directive (2000/43/EC).¹²³ The Commission also refers to Articles 4 and 6 of the Employment Equality Directive, where different grounds for discrimination such as religion, age and sex intersect.¹²⁴

In 2008, the Commission launched a directive proposal for implementing the principle of equal treatment (which prohibits discrimination based on religion, disability, age or sexual orientation) outside working life.¹²⁵ The European Parliament made suggestions for an Addendum in 2009, inter alia, by adding discrimination on multiple grounds as a separate criterion for discrimination.¹²⁶ According to the proposal, discrimination is multiple discrimination when it is based on a) intersecting grounds of religion or belief, disability, age or sexual orientation; (b) the combination of one or more of the above criteria with (i)

¹²² Schiek, Dagmar, “Broadening the scope and the norms of EU gender equality law: towards a multidimensional conception of equality law”, *Maastricht Journal of European and Comparative Law*, 2005, vol. 12, No. 4: 427-466, 464; Uccellari, Paola, “Multiple Discrimination: How Law can Reflect Reality”, *The Equality Rights Review*, Vol. 1, 2008: 24-49, 30-31.

¹²³ *Tackling Multiple Discrimination: Practices, Policies and Laws*, European Commission, 2007, p. 20.

¹²⁴ *Ibid.*, Articles 4,2 and 6,2.

¹²⁵ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, Brussels, 2.7.2008 COM(2008) 426 final 2008/0140 (CNS).

¹²⁶ Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation * European Parliament legislative resolution of 2 April 2009 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)).

gender (the Gender Directive 2004/113/EC and its scope of application); (ii) racial or ethnic origin (limited to Directive 2000/43/ EC and its scope of application); (iii) citizenship (based on article 12 of the EC Treaty).¹²⁷ So far, the initiative has not led to the adoption of the directive.

In a recent report to the European Commission, *Intersectional discrimination in EU gender equality and non-discrimination law* (2016), Fredman points out that the EU anti-discrimination legislation still includes significant structural obstacles to intersectional claims relating to the different scopes of application of the different directives or to the different grounds of discrimination and to the fact that it is not possible to extend the grounds of discrimination beyond the list.¹²⁸ The EU Court has namely repeated that it cannot extend the grounds of discrimination beyond the grounds listed in the directives.¹²⁹ Fredman does point out, however, that the EU Court has partially implemented an intersectional approach especially in cases concerning sexual or gender identity when elderly people were concerned, and in cases where gender was linked to pregnancy or parenthood.¹³⁰ Fredman's report also shows that at least 13 EU Member States have included the concept of multiple discrimination in their legislation.¹³¹

In any case, multiple discrimination/the intersectional approach is an increasingly prominent issue both within the EU and nationally and internationally.¹³² Increased awareness of multiple discrimination and, for example, the active role of non-governmental organisations or individual states in reporting instances of multiple discrimination to different human rights bodies have also affected the perception and inclusion of multiple discrimination in both legislation and in court practice.

¹²⁷ Ibid.

¹²⁸ Fredman, Sandra (2016), p. 62.

¹²⁹ C-13/05 Chacón Navas v Eurest Colectividades SA [2006] 3 C.M.L.R. 40 (CJEU (Grand Chamber)) para. 56; C-303/06, Coleman v Attridge Law [2008] ECR I-5603, [2008] IRLR 722 (ECJ) para. 46; C 354/13 Fag og Arbejde (FOA), acting on behalf of Karsten Kaltoft, v Kommunernes Landsforening (KL), acting on behalf of the Municipality of Billund, (CJEU) para. 36. See in more detail Ibid., 67.

¹³⁰ See analysis, Fredman, Sandra (2016), p. 71-75.

¹³¹ Ibid., p. 9.

¹³² See e.g. Lawson & Schiek (2011), p. 3.

The Sámi are the only legally recognised indigenous people in the EU.¹³³ As noted by MEP Sirpa Pietikäinen, it is astonishing that the EU lacks a clear policy to safeguard the rights of the Sámi.¹³⁴ Indigenous peoples have been taken into account in EU policy, but their role is primarily visible in the Union's trade and development cooperation with third countries.¹³⁵ Additional Protocol 3 to the Finnish EU Accession Treaty also deals with the Sámi's rights. The Protocol is part of the EU Treaty, the above-mentioned Lisbon Treaty. The Protocol acknowledges that Finland, Norway and Sweden have obligations and commitments under national and international law with regard to the Sámi. The Contracting Parties also note that Finland, Norway and Sweden are committed to maintaining and developing the Sámi's livelihoods, language, culture and lifestyles, and find that traditional Sámi culture and Sámi livelihoods depend on natural sources, such as reindeer herding in the traditional Sámi areas.¹³⁶ As a result, the development of the criteria of multiple discrimination should take into account the Sámi separately as an indigenous people and an ethnic minority.

¹³³ The Government Bill, HE 248/1994; Hallituksen esitys Eduskunnalle saamelaisten kulttuuri-itsehallintoa koskevien säännösten ottamisesta Suomen Hallitusmuotoon ja muuhun lainsäädäntöön; The Constitutional Law Committee of the Parliament, PeVM 12/1990 vp, Perustuslakivaliokunnan valtiopäiväjärjestyksen 52 a §:stä antama mietintö.

¹³⁴ Sirpa Pietikäinen, <https://ihmisoikeusliitto.fi/vierailijablogi-saamelaisten-oikeudet-tarvitsevat-vahvempaa-turvaa/>

¹³⁵ Ibid. However, it should be noted that in the motion for a European Parliament Resolution on an integrated European Union policy for the Arctic (2016/2228 (INI)), the European Parliament states that whereas some four million people live in the Arctic region, of which some 10 % are indigenous peoples; whereas the vulnerable Arctic environment, as well as the fundamental rights of indigenous peoples must be respected and protected with more stringent safeguards; whereas the rights of indigenous peoples and local populations to approve and to participate in decision-making affecting the extraction of natural resources needs to be guaranteed, 8.2.2017, A8-0032/2017, R.

¹³⁶ The treaty on Finland's accession to the European Union (SopS 103/1994) includes Protocol 3 on the Sámi.

4. Fundamental and human rights of minorities within a minority: Sámi persons with disabilities and persons belonging to sexual and/or gender minorities

From a legal standpoint, the Sámi are both a minority group and an indigenous people. In international law, the rights of indigenous peoples are stronger than the rights of minorities – especially in regards the right to self-determination and the participation rights stemming from it.¹³⁷ The voices of minorities within indigenous peoples are often least heard in society, and that is why special attention should be paid to their participation rights.

The purpose of our research and this report is to examine the human rights of two minority groups within the Sámi community; on one hand, persons with disabilities and, on the other hand, sexual and gender minorities, as well as the rights of individuals belonging to these groups, and the way these rights are implemented in Finland. The rights of persons belonging to such minorities within a minority are protected by more than one category of minority rights and indigenous rights.

The purpose of this report is to show that persons belonging to minorities inside minorities often face discrimination on multiple grounds because of their status and because of existing social structures. However, their rights are also protected on multiple grounds: for example, Sámi persons with disabilities are protected by both the rights of the Sámi and the rights of persons with disabilities. Naturally, there are no separate rights for minority groups within the Sámi, but their rights must be examined in the context of different categories. This poses challenges in the application of the law because different legal categories are not necessarily considered to be read together and thus create a stronger legal obligation. For this

¹³⁷ See e.g. Koivurova, Timo, “Alkuperäiskansojen asema ja oikeudet kansainvälisessä oikeudessa”, in K. Kokko, *Kysymyksiä saamelaisten oikeusasemasta*, Lapin yliopiston oikeustieteellisiä julkaisuja, sarja b numero 30, 2010, p. 26-49; Åhren, M., *Indigenous Peoples’ Status in the International Legal System* (Oxford: OUP 2016) 84.; Keal, P., “Indigenous Sovereignty”, in Jacobsen, T., Champford, C. and Thakur, R., (eds), *Re-envisioning Sovereignty – The End of Westphalia?*, Farnham: Ashgate, 2008, p. 317.

reason, those who apply and enforce laws should be able to – within the limits of the applicable legal framework – take into consideration the fact that the Sámi culture and the rights it implies bring an additional component, in the light of which the other special rights - for example the rights of persons with disabilities or LGBTIQ rights - should be interpreted and applied in practice.

As Sáminess is the common denominator for this study, within which we examine two separate minorities who both are entitled to Sámi rights, it is justified to first examine the human rights of the Sámi, after which we will examine separately the human rights of Sámi people with disabilities and the rights of Sámi persons identifying as a sexual and/or gender minority.

Human rights are the starting point of this study. Given this delimitation, we will not look at national legislation as a whole, but rather shed light, by way of example, on the exercise of human rights and on their challenges. As fundamental rights and human rights are unified, it is not possible to discuss the human rights of the aforementioned groups without considering their constitutional status in Finland.

4.1. The constitutional status of the Sámi as an indigenous people

The basis for protecting the rights of the Sámi, and the starting point for ensuing obligations, is their constitutional status as an indigenous people.¹³⁸ In addition, a separate Skolt Act protects the legal status of the Skolt Sámi.¹³⁹ Section 17 subsection 3 of the Constitution secures the Sámi their right as an indigenous people to maintain and develop their own language and culture. This provision guarantees the status of the Sámi as an indigenous people with the associated rights as laid down in international conventions.¹⁴⁰ In addition, the Sámi have

¹³⁸ See Heinämäki, L., ”Saamelaisten oikeudet Suomessa”, in L. Heinämäki et al, Saamelaisten oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston kanslia, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 2017/4, p. 22.

¹³⁹ The 1984 Skolt Act was amended with 1995 Skolt Act (253/1995). The purpose of the Act is to improve the living conditions and livelihoods of the Skolt population and area, and to maintain and promote the Skolt culture.

¹⁴⁰ The Government Bill, HE 309/1993 vp, Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta, p. 65; The Government Bill, HE 248/1994 vp.

linguistic and cultural self-government, as provided by section 121, subsection 4 of the Constitution.¹⁴¹ Cultural self-governance is regulated in more detail in the Act on the Sámi Parliament.¹⁴²

The rights of the Sámi must be considered primarily as rights of indigenous peoples, not just minority rights or general civil rights concerning all the citizens, although those rights naturally concern the Sámi as well. In addition to the Constitution, international law and its constantly developing nature must be taken into consideration.¹⁴³ The Constitutional Law Committee of the Parliament has underlined the importance of a united view on fundamental and human rights on several occasions, and has deemed it important that Finland's international and national human rights policies support each other, and that the priorities of Finland's international human rights policy are implemented in Finland.¹⁴⁴

The human rights of indigenous peoples, people with disabilities and sexual and gender minorities are all priorities in Finland's human rights policy.¹⁴⁵ According to a description by the Ministry for Foreign Affairs, “most vulnerable to human rights violations are persons who belong to more than one of the aforementioned population groups”.¹⁴⁶ For this reason, Finland's human rights policy emphasizes specific actions against discrimination on multiple grounds.¹⁴⁷ This should also be reflected in Finland both in legislative drafting and in the practical application of laws.

¹⁴¹ The right of the Sámi to use their own language in courts, with authorities and the obligation of authorities and public powers to implement and promote the linguistic rights of the Sámi are stipulated in the Sámi Language Act (1086/2003). There are provisions on the Sámi language as a language of education, as mother tongue and as a subject of study in the Basic Education Act (628/1998), Upper Secondary Schools Act (629/1998), the Act on Children’s Day Care (36/1973) and the Health Care Act refers to the Language Act (1326/2010).

¹⁴² Act on Sámi Parliament 974/1995.

¹⁴³ See Heinämäki, L. (2017), p. 23.

¹⁴⁴ The Constitutional Law Committee of the Parliament, PeVM 13/2014 vp — HE 264/2014 vp; PeVL 52/2014 vp.

¹⁴⁵ Ministry for Foreign Affairs,

<http://formin.finland.fi/Public/default.aspx?nodeid=49583&culture=fi-FI&contentlan=1>

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

The purpose of special rights for the Sámi is to create real equality and the conditions for the preservation of indigenous culture and its specific characteristics both today and in the future. The Constitution secures the legal status of the Sámi specifically as an indigenous people. The ultimate nature of the rights of indigenous peoples is collective, when they are manifested in the instruments regulating indigenous rights. Their purpose is to secure the preservation and the development of the culture of the group – the indigenous people – in the way the group wants it to be preserved and developed. The group naturally consists of individuals who are protected as the members of the group.¹⁴⁸ The collective rights of the group must not be discriminatory to individuals, but they must be equally guaranteed to all members of the group. For the Sámi, this means that the rights of the Sámi, even if they have a collective basis, must be guaranteed equally to all Sámi individuals, also taking into account the special protection criteria based on special reasons pertaining to an individual. Such reasons may be related to disability, sexuality or gender. The bodies supervising human rights can adopt statements on the protection of individuals within the group, with respect to equality and equal treatment.¹⁴⁹

According to section 6 of the Constitution, everyone is equal before the law and no one shall, without an acceptable reason, be treated differently from other persons on the grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or for other reasons that concern their person.¹⁵⁰

The discrimination provision of the Constitution, like the prohibition of discrimination in the international human rights conventions, lists some grounds of discrimination that can be considered as the core of the prohibition of discrimination in society. This list is not, however, meant to be exhaustive, but differential treatment is broadly prohibited, in addition to the grounds listed specifically, also for other reasons that concern one's person.¹⁵¹ Such reasons can

¹⁴⁸ See Heinämäki, L. (2017), p. 23.

¹⁴⁹ Ibid.

¹⁵⁰ Constitution of Finland 731/1999, 6 §.

¹⁵¹ The Government Bill, HE 19/2014, Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräiksi siihen liittyviksi laeiksi.

include social position, wealth, participation in associations, family relationships, marital origin, sexual orientation and place of residence.¹⁵²

Mere formal equality cannot be considered sufficient in every case, but the aim is to ensure also factual equality. In such cases, we resort to so-called affirmative action. This means including special measures to prevent or remove disadvantages caused by discrimination, in order to promote factual equality.¹⁵³ This possibility of derogation was also mentioned in the preparatory work on the reform of fundamental rights,¹⁵⁴ which states that “the provision does not preclude the need for positive special treatment to ensure effective equality, that is to say, measures to improve the status and conditions of a particular group (e.g. women, children, minorities)”.¹⁵⁵

The recently revised Non-discrimination Act¹⁵⁶ reflects the equality rule of the Constitution. According to the preparatory works of the Act, regulation would be of particular relevance for those belonging to groups at risk of discrimination such as immigrants, ethnic minorities, people with disabilities, elderly people, children, young people, religious minorities and sexual and gender minorities.¹⁵⁷ Sámi persons with disabilities and Sámi LGBTIQ persons are members of both an ethnic minority and minorities within that minority, and for this reason, they may be considered at a special risk of facing discrimination on multiple grounds.

In the revised Non-discrimination Act the scope of the obligation to promote non-discrimination was extended from public authorities to include education providers and educational institutions as well as employers, all of whom are obliged to develop a plan to promote equality. The Sámi Parliament Equality Plan supports a diverse work community where people of different ages, women and men, people of different cultural backgrounds, with different genders and sexual

¹⁵² The Government Bill, HE 309/1993 vp, Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta, p. 43-44.

¹⁵³ Niemivuo, M., ”Suomen Perustuslaki ja Saamelaiset”, in K. Kokko (toim.), Kysymyksiä saamelaisten oikeusasemasta, Lapin yliopiston oikeustieteellisiä julkaisuja, Sarja B no 30, Rovaniemi (2010), p. 103.

¹⁵⁴ The Government Bill, HE 309/1993 vp.

¹⁵⁵ Ibid., p. 44.

¹⁵⁶ Non-discrimination Act 1325/2014.

¹⁵⁷ The Government Bill, HE 19/2014, section 3: Objectives and key propositions in the Bill.

orientations, and people whose ability to function is limited by injury or illness all enrich and bring resources to the work community. According to the plan, the promotion of equality is a principle intersects with the activities of the Sámi Parliament, and is also taken into account in budget and strategy preparations. The Equality Plan of the Sámi Parliament takes into account the following grounds for discrimination: ethnic background, age, language, sex, religion and conviction, disability and sexual orientation.¹⁵⁸ The plan does not explicitly consider gender identity as a potential ground for discrimination, which should be added alongside sexual orientation.¹⁵⁹ The plan also takes into account that the same persons or groups of persons may be simultaneously discriminated against on multiple grounds, or in different situations on different grounds of discrimination, which is referred to in the plan as discrimination on multiple grounds, or intersectional discrimination.¹⁶⁰ The plan emphasizes positive special treatment where, in measures connected with recruitment and career advancement, two applicants with similar formal qualifications are compared with preference for an applicant representing an underrepresented group.¹⁶¹ For people with disabilities, reference is made to reasonable accommodation required by the Non-Discrimination Act, which includes, for example, assistive devices to help people with disabilities at work.¹⁶²

The new Non-discrimination Act strengthens the legal protection of Sámi persons with a disability and persons belonging to Sámi sexual and gender minorities. For example, the rights of people with disabilities are poorly realised in issues related to education, studies and work. The prohibition of discrimination has also been clarified so that it also includes discrimination based on assumption and discrimination by association. These provisions are based on the case law of the Court of Justice of the European Union and the European Court of Human Rights. They clarify that when unfair treatment is based on a false assumption of the

¹⁵⁸ Equality Plan of the Sámi Parliament, Saamelaiskäräjien henkilöstöpoliittinen ohjelma, tasa-arvo ja yhdenvertaisuussunnitelma, 2013, p. 39.

¹⁵⁹ This is most likely due to the fact that the plan was drafted before the reform of the Equality Act.

¹⁶⁰ *Ibid.*, p. 40.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

sexual orientation of a person for example, or if a person is treated unfairly because of the disability of someone close to them, it is still discrimination.¹⁶³

According to section 8 of the Non-discrimination Act, no one may be discriminated against because of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics. Discrimination is prohibited, regardless of whether it is based on a fact or assumption concerning the person him/herself or another. In addition to direct and indirect discrimination, harassment, denying persons with disabilities reasonable accommodation, as well as an instruction or order to discriminate, constitute discrimination as referred to in this Act. According to section 9 of the Act, proportionate different treatment that aims to promote de facto equality, or to prevent or remove the disadvantages attributable to discrimination, does not constitute discrimination.

For persons belonging to minorities within the Sámi community, specific actions to improve the status and circumstances of their rights are needed, both because they are Sámi, and because of the particular needs and circumstances of the internal minority groups. Positive special treatment constitutes the key basis for the legal protection of persons belonging to these minorities. For Sámi persons also belonging to internal minorities, the equality provisions of the Constitution and the Non-discrimination Act must be applied, taking into account the provisions on the protection of Sámi culture, which in themselves require special measures, i.e. positive action. Legal protection on multiple bases places a strengthened obligation to provide Sámi language and culturally sensitive services in the social and healthcare system for persons with disabilities. Similarly, the duty to ensure mental health services in the Sámi language to a Sámi LGBTIQ person is included in the obligations of legal protection on multiple grounds.

The constitutional status of the Sámi secures them the right to language and culture, both as an indigenous group and as individuals. Although language can be considered a key part of culture, it is explicitly mentioned as a separate

¹⁶³ Ibid.

constitutional right of the Sámi. Section 17 subsection 3 of the Constitution includes a reference to the right of the Sámi to use their own language before the authorities. The provision requires that the law secures the Sámi an individual right to use their mother tongue, North Sámi, Inari Sámi or Skolt Sámi before the authorities, to the extent defined in the law.¹⁶⁴ The constitutional status of the Sámi language is safeguarded with the Sámi language Act¹⁶⁵, the purpose of which was to correct the substantive shortcomings in the previous law and to align the legislation with the constitutional provision of the Sámi's right to maintain and develop their own language and culture and the obligations of new international conventions.¹⁶⁶ The central aim was to ensure that the Sámi's right to use their own language in official contacts would also be realised in practice. The Act sought to broaden the objectives of Sámi cultural self-government by supporting the Sámi language and culture, strengthening the official status of the language and lowering the threshold at which people start to use the language in official contacts.¹⁶⁷

In practical situations, however, Sámi language services or interpretation services are not provided in the spirit of the Constitution or the Language Act, as this report also shows. The Sámi Language Act is currently undergoing a reform with a view to rendering it compatible with the social and health services reform.¹⁶⁸ However, the new Act is not intended to create new obligations for the authorities, so no legislative improvement is expected concerning Sámi-language services. A large proportion of the Sámi do not live in the Sámi homeland, which makes the availability of Sámi-language or interpretation services even more problematic. The Sámi Parliament has proposed that the Sámi people who live outside the Sámi homeland and the fulfilment of their basic linguistic rights

¹⁶⁴ The Government Bill, HE 309/1993, vp, p. 65.

¹⁶⁵ Sámi Language Act, 1086/2003.

¹⁶⁶ See the Government Bill, HE 264/2014 vp, Hallituksen esitys eduskunnalle itsenäisten maiden alkuperäis- ja heimokansoja koskevan yleissopimuksen hyväksymisestä sekä laeiksi yleissopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja Metsähallituksesta annetun lain muuttamisesta.

¹⁶⁷ The Government Bill, HE 46/2003 vp, Hallituksen esitys eduskunnalle saamen kielilaiksi, p. 25. See the Government Bill, HE 264/2014 vp.

¹⁶⁸ The Government Bill, HE 44/2017 vp, Hallituksen esitys eduskunnalle laiksi saamen kielilain muuttamisesta.

should be addressed in the context of the reform of the Sámi language law.¹⁶⁹ The reason for this is that around 65% of Sámi live outside the Sámi homeland and as many as 3/4 of them are children under 10 years of age. Migration from the Sámi homeland to cities and other growth centres is increasing year by year. These Sámi cannot access services in their own language.¹⁷⁰ The statement by the Sámi Parliament emphasizes that the provision of services in their own language, and the ability to speak their own language, strengthens the identity of the Sámi children and young people. It also points out that the value and significance of the Sámi language are further emphasized in cities and regions where there is no Sámi family or any contact with the family land and the use of nature.¹⁷¹

The Sámi culture is understood as a broad concept in the provision of the Constitution. It is not limited only to the protection and development of language rights, but it extends to the protection of the Sámi culture that also includes the traditional Sámi livelihoods such as reindeer husbandry, fishing and hunting.¹⁷² The Sámi culture also includes the modern forms of traditional livelihoods.¹⁷³ Government bill 167/2014 on amending the Act on the Sámi Parliament proposed that a provision on the main features of the Sámi culture would be added to the Act. According to the proposal, the Sámi culture would include Sámi language, Sámi cultural heritage, expressions of Sámi culture, Sámi traditional knowledge, traditional Sámi livelihoods and their modern forms of practice, as well as Sámi handicrafts and other cultural ways and forms practiced by the Sámi as an indigenous people. According to the proposal, the provision was not meant to be exhaustive. According to the proposal, the Sámi culture within the meaning of the Act would also include other ways and forms than the ones expressly mentioned in the provision.¹⁷⁴

¹⁶⁹ Sámi Parliament statement to the Ministry of Justice, 30.3.2017 Dnro 184 /D.a.2/2017.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² The Government Bill, HE 309/1993 vp, p. 65. Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta.

¹⁷³ The Constitutional Law Committee of the Parliament, PeVL 38/2004 vp.

Perustuslakivaliokunnan lausunto hallituksen esityksestä laiksi Metsähallituksesta.

¹⁷⁴ The Government Bill, HE 167/2014 vp., Hallituksen esitys eduskunnalle laeiksi saamelaiskäräjistä annetun lain ja rikoslain 40 luvun 11 §:n muuttamisesta.

In principle, regarding indigenous rights, the indigenous people themselves define their culture and the practices that are included in it. However, the different practices or the customs and customary laws of the indigenous peoples cannot be incompatible with human rights.¹⁷⁵ This principle is intended to prevent discrimination within the communities. For example, putting a person in an unequal position because of their gender or their sexual orientation could not be justified by the internal traditional customs of the community, but it would be against the basic principles of human rights. On the other hand, the communities may have a legal justification for limiting the rights or certain individuals in some cases, but the limitations should always have a reasonable and objective justification, and they should always take place to protect the community.¹⁷⁶

Due to the special characteristic of a person, such as disability, it may be harder for them to exercise not only their linguistic rights, but also the rights related to their traditional livelihoods. For example, a Sámi reindeer herder or fisher with reduced mobility may need more state subsidies for different equipment than a person who is not practicing a cultural traditional livelihood. In addition to provisions of the Constitution, which directly concern the Sámi, other provisions such as constitutional environmental rights are relevant to traditional livelihoods from the point of view of cultural continuity and viability. Section 20 of the Constitution obliges the public authorities to endeavour to guarantee for everyone the right to a healthy environment. Sámi persons with disabilities may need special measures to maintain their cultural livelihoods.

A pertinent example of the abovementioned situation is the case of a Sámi reindeer herder whose application for a business subsidy as vocational rehabilitation was rejected by the Social Insurance Institution (Kela) on November 12, 2010. The person had applied for a business subsidy for the

¹⁷⁵ Article 34 of the UN Declaration on the Rights of Indigenous Peoples requires that the juridical customs, traditions, procedures and practices of indigenous peoples are in accordance with international human rights standards. See also Myntti, K., "Suomen saamelaiden yhteiskunnallinen osallistuminen ja kulttuuri-itsehallinto," Raportti Oikeusministeriölle, osa I. OM, lainvalmisteluosaston julkaisu 2/1997, Helsinki (1997), p. 24.

¹⁷⁶ *Lovelace v. Canada*, 30 July 1981, HRC, no. 24/1977, A/36/40 (1981) U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981), *Kitok v. Sweden*, 27 July 1988, HRC, no. 197/1985, CCPR/C/33/D/197/1985; *Apirana Mahuika v. New Zealand*, 27.10.2000, 547/1993, U.N. Doc. CCPR/C/70/D/547/1993 (2000).

purchase of a snowmobile and an ATV, but no subsidy was granted because the aid was not considered to ensure that the person could be employed in a suitable profession or work that would provide a reasonable income. On the basis of the person's tax information, income received from reindeer herding was not considered to be sufficient for regarding the activity as a business that could provide substantial additional income. In addition, the Social Insurance Institution in its decision did not count the snowmobile or the ATV as essential work tools necessary because of illness, but considered them mobility aids that could not be reimbursed by business subsidies.¹⁷⁷

The person first appealed the decision to the Social Security Appeal Board on December 2, 2010 and in the appeal explained comprehensively that the tax information did not give an adequate picture of the reindeer herding income. Among other things, the tax data does not take into account the economic importance of reindeer herding for the food costs of the household or for providing materials for Sámi traditional handicrafts, clothing and accessories. In the appeal, the person also explains that they are paying their annual fees for the herding cooperative through reindeer herding work, which is of great economic importance. In addition to the economic importance, the person emphasized the cultural importance of reindeer husbandry as the material basis for their Sámi culture, and as a key element for maintaining and developing their own language, culture and way of life. The person considers that reindeer herding significantly supports their personal well-being and prevents marginalisation¹⁷⁸. In its opinion on the appeal to the Social Security Appeal Board, posted on January 18, 2011, the Social Insurance Institution notes having re-examined the matter and states that there are no grounds for amending the previous decision¹⁷⁹. The authors of this study received details regarding another complaint for the purposes of this research. The person filed a complaint to the Social Security Appeal Board concerning the Kela opinion of January 18, 2011. In the appeal, the person argues comprehensively that, contrary to the opinion of the Social Insurance

¹⁷⁷ Kela decision on rehabilitation, 12.11.2010 (The person concerned by the decision has given their permission to use the decision and other related materials given to the researchers as an anonymous case example).

¹⁷⁸ Kela statement on the aforementioned appeal, 18.1.2011.

¹⁷⁹ Kela statement on the aforementioned appeal, 18.1.2011.

Institution¹⁸⁰, a snowmobile and an ATV are not just a means of mobility, but daily and necessary tools in reindeer husbandry. In the appeal, the person also justifies and describes in detail the use and significance of the aforementioned tools in reindeer herding.¹⁸¹

The researchers have not received documents to indicate how the Social Insurance Institution handled the case further, but the example shows that a person conducting the Sámi traditional livelihoods may need specific tools, and that knowledge of the Sámi culture would have a special significance in dealing with such cases. This case, or at least a similar case, is described in the Social and Health Security Report 75/2011 ordered by the Kela Research Unit, *Saamelainen Kelan asiakkaana, Saamelaisten oikeudet ja asema alkuperäiskansana Kelan toimeenpanemassa sosiaaliturvassa*¹⁸² (*A Sámi as a Kela client, the rights and the status of the Sámi as indigenous people in the social security system implemented by Kela*). The report notes that the importance of reindeer herding in the Sámi culture and as a livelihood must not be forgotten, and that in future decisions it would be advisable to consult an expert in Sámi reindeer herding.¹⁸³ According to the expert we interviewed for our project, however, there have been no changes in the decision-making processes of the National Insurance Institution¹⁸⁴.

According to section 22 of the Constitution, public authorities shall guarantee the observance of basic rights and liberties and human rights. Consequently, the authorities responsible for adopting, enforcing, applying and supervising laws must, for their part, be able to detect the structures of multiple discrimination and make sure that the Sámi's fundamental and human rights are also realised for persons belonging to their internal minority groups, who are simultaneously protected by rights that do not stem from their Sámi status.

Especially in situations concerning the most vulnerable persons, the authorities must choose a conceivable solution that best implements the rights and

¹⁸⁰ Kela statement on the aforementioned appeal, 18.1.2011.

¹⁸¹ Appeal concerning the aforementioned Kela statement, 7.2.2011.

¹⁸² Faurie (2011).

¹⁸³ Ibid., p. 34-35.

¹⁸⁴ Email discussion, SámiSoster ry, Ristenrauna Magga, 27.9.2017.

obligations of the Constitution. With a positive interpretation of fundamental rights, it is the responsibility of the authority to implement the constitutional obligation to safeguard fundamental rights.¹⁸⁵ However, the Constitution does not directly set out, for example, to what services a Sámi child who is hard-of-hearing is entitled. These rights are governed by the Disability Services Act and other legislation. Under Article 17(3) of the Constitution, the rights of persons who use sign language or need interpretation or translation services because of a disability shall be protected by an act. As is revealed in a later chapter, there is no Sámi sign language, so language rights might not be realised because of this.

4.2. On the human rights of the Sámi

4.2.1. General human rights conventions

Universal and European human rights naturally apply to all Sámi people, including representatives of Sámi minority groups. Equality and protection against discrimination are the principle foundations of human rights. As mentioned in a previous chapter on discrimination, according to the first article of the UN Universal Declaration of Human Rights of 1948¹⁸⁶, all human beings are born free and equal in dignity and rights. According to the second article of the declaration, everyone is entitled to all the rights and freedoms set forth in the declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the regional level, the European Convention on Human Rights¹⁸⁷ and the previously mentioned Council Directives, such as 2000/43/EC also include a non-discrimination clause.

For the Sámi, one of the most important universal human rights conventions is the UN International Covenant on Civil and Political Rights (ICCPR). The UN Human Rights Committee overseeing the agreement interprets that Article 26 of

¹⁸⁵ Rätty, Tapio, *Vammaispalvelut, vammaispalvelujen soveltamiskäytäntö*, Kynnys 2017, p. 21.

¹⁸⁶ UN Universal Declaration of Human Rights 10.12.1948.

¹⁸⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, 22.11.1984. Sops 63/1999.

the ICCPR obligates a state to take special positive measures to achieve genuine equal treatment.¹⁸⁸ When Article 26 is read together with Articles 27 (right to culture) and 1 (people's right to self-determination) of the ICCPR, they form a strongly binding whole concerning positive special treatment.

Article 27 of the ICCPR provides the basis for the cultural protection of minorities. The United Nations Human Rights Committee, which oversees the agreement, has explicitly stated that the article also protects the culture of indigenous peoples, including traditional livelihoods such as hunting, fishing and reindeer husbandry.¹⁸⁹ The Human Rights Committee has required that states take positive measures to implement Article 27.¹⁹⁰ The Committee has emphasized the close relationship between indigenous peoples and their lands, and has therefore expressly stated that they have the right to participate in the use of natural resources. Since the 1990s, the Human Rights Committee has been dealing with individual complaints about Finland in which Sámi reindeer herders have complained about forest harvesting, forest road construction and/or rock quarrying, claiming that they prevent them from carrying out reindeer husbandry.¹⁹¹

A key development in international law regarding indigenous peoples is that indigenous peoples are no longer seen merely as minorities, but are recognised as peoples with a right to self-determination. The views of human rights monitoring bodies emphasize that the right of indigenous peoples to culture must be interpreted in the light of peoples' right to self-determination. This interpretation is directly linked to the traditional livelihoods of indigenous

¹⁸⁸ ICCPR: General Comment no. 18, Non-discrimination, § 10 ("...the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant"). See also draft for the Sámi Convention p. 112.

¹⁸⁹ Human Rights Committee, General Comment No. 23: The Right of Minorities (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add. 5, 8 April 1994, para; *I. Länsman et al v. Finland*, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992 (1994).

¹⁹⁰ UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5, Para 6.

¹⁹¹ *I. Länsman, ibid.*; *J. Länsman et al v. Finland*, Communication No. 671/1995/, UN Doc. CCPR/C/58/D/671/1995; *A. Äärelä and J. Näkkäläjärvi v. Finland*, Communication No. 779/1997, UN Doc. CCPR/C/73/D/779/1997; *J. and E. Länsman et al v. Finland*, Communication No. 1023/2001. U.N. Doc/CCPR/C/83/D/1023/2001 (2005).

peoples and their special connection to their traditional lands and areas. Human rights monitoring bodies have thus taken the position that the close relationship of indigenous peoples with traditional lands and the livelihoods that are part of their culture require that their right to self-determination be recognized, in order to strengthen and maintain their culture as indigenous peoples.¹⁹²

Another key human rights convention for the Sámi is the International Covenant on Economic, Social and Cultural Rights¹⁹³ (ICESCR). According to the interpretation of the Committee on Economic, Social and Cultural Rights (CESCR), which is responsible for monitoring the implementation of the Covenant, the agreement also protects the right of the indigenous peoples to culture and to traditional collective land use and control of land, and includes the principle of non-discrimination.¹⁹⁴ The CESCR has also made a number of

¹⁹² The UN Human Rights Committee has invoked Article 1 of the ICCPR on people's right to self-determination concerning indigenous peoples more and more actively since 1999. See e.g. Concluding Observations of the Human Rights Committee on Canada UN Doc. CCPR/C/79/Add.105 (1999); Concluding Observations on Mexico, UN Doc. CCPR/C/79/Add.109 (1999); Norway, UN Doc. CCPR/C/79/Add.112 (1999); Australia, UN Doc. CCPR/CO/69/Aus (2000); Denmark, UN Doc. CCPR/CO/70/DNK (2000); Sweden, UN Doc. CCPR/CO/74/SWE (2002); Finland, UN Doc. CCPR/CO/82/FIN (2004); Canada, UN Doc. CCPR/C/CAN/CO/5 (2005); and the United States, UN Doc. CCPR/C/USA/CO/3 (2006); Concluding observations on the Sixth periodic report of Finland, CCPR/C/FIN/CO/6, 22 August 2013; Concluding Observations on the Seventh Periodic Report of Sweden, CCPR/C/SWE/CO/728 April 2016, paras 38-39. See also *Saramaka v. Suriname*, Inter-American Court of Human Rights, Judgment of November 28, 2007, Series c, No 172, para 93.

¹⁹³ International Covenant on Economic, Social and Cultural Rights, G.A. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 49, UN Doc. A/6316 (1966), adopted December 16, 1966, entered into force January 3, 1976, 993 UNTS 3.

¹⁹⁴ See e.g. Committee on Economic, Social and Cultural Rights, General Comment No. 21 Right of everyone to take part in cultural life (Art. 15, 1(a), of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/21 (21 December 2009); Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of Finland, E/C.12/FIN/CO/6, 17 December 2014; Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of Canada, E/C.12/CAN/CO/6 23 March 2016; See also Committee on Economic, Social and Cultural Rights, Concluding observation on the fourth periodic report of Paraguay, E/C.12/PRY/CO/4, 20 March 2015, para. 6; Committee on Economic, Social and Cultural Rights, Concluding Observations, Nicaragua, E/C.12/NIC/CO/4, 28 November 2008, para. 11. See generally, Ward, T., "The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law", 10 *Northwestern Journal of International Human Rights* (2011) p. 54, 57.

recommendations concerning the rights of the Sámi in Finland, with a particular emphasis on the aim of getting free, prior and informed consent of the Sámi before taking any measures in the Sámi homeland that would threaten their traditional land use.¹⁹⁵ The Committee also expresses its concern at the shortcomings in the implementation of the Sámi language rights and urges the State to secure Sámi language teaching both inside and outside of the Sámi homeland.¹⁹⁶

The most essential international human rights convention that deals with discrimination issues and equality and which is also important for the Sámi, is the UN Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The prohibition of discrimination is not applied to certain ethnic groups, or to positive action or special positive measures directed at persons who require positive action. This special treatment is allowed according to Article 1 part 4 of the Convention, when it is necessary to ensure the members of an ethnic group's equal enjoyment or exercise of human rights.¹⁹⁷ The committee monitoring the convention (Committee on the Elimination of Racial Discrimination, or CERD) has drafted general recommendations number 23 on the rights of indigenous peoples.¹⁹⁸ According to the CERD, discrimination of indigenous peoples falls under the scope of the Convention. The Committee has emphasized that indigenous peoples have lost control over their lands and resources "to colonists, commercial companies and State enterprises" as a result of discrimination, and that being deprived of their lands threatens their culture and their historical identity. The Committee has taken a strong position on the right of indigenous peoples to own, develop, control and use their communal lands, territories and resources.¹⁹⁹ In recommendations concerning the Sámi in

¹⁹⁵ See e.g. the 2014 recommendations of the ICESCR Committee, Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of Finland, 28 November 2014, E/C.12/FIN/CO/6., Para 9.

¹⁹⁶ *Ibid.*, Para 29.

¹⁹⁷ See also the Nordic Sámi Convention, draft 2005, report of expert group, p. 121.

¹⁹⁸ Committee on the Elimination of Racial Discrimination, CERD: General Recommendation No. 23: Indigenous Peoples, 18. of August, 1997.

¹⁹⁹ Committee on the Elimination of Racial Discrimination, CERD: General Recommendation No. 23: Indigenous Peoples, 18.08.1997. See generally on the strong protection of the indigenous peoples in the CERD Convention, Thornberry, P., "The Convention on the Elimination of Racial Discrimination, Indigenous Peoples and Caste/Decent-based

Finland, the CERD has commented on land and participation issues, and on the linguistic rights of the Sámi. In the 2017 recommendations, the Committee notes that 75 per cent of Sámi children under the age of 11 live outside the Sámi homeland and is concerned that, despite an allocated budget increase, the number of qualified teachers of Sámi languages remains insufficient. The Committee also notes that the State party has proposed an amendment to the Sámi Language Act and that the provision of health and social care services in the Sámi languages remains insufficient. The Committee recommends that the State Party ensure adequate provision of physical and mental health services and social care in the Sámi languages.²⁰⁰ As was noted in the previous chapter, the availability of services in their own language has been a problem both in health services for Sámi persons with disabilities as well as in the provision of mental health services for sexual and gender minorities.

The Convention on the Rights of the Child²⁰¹ likewise contains a prohibition on discrimination including, in addition to ethnicity and birth, a separate prohibition of discrimination based on disability.²⁰² In addition to the non-discrimination clause, the Convention includes several rights that are important from the point of view of indigenous peoples. Article 17 (d) of the Convention requires the State to encourage the mass media to pay particular attention to the linguistic needs of children belonging to minorities or indigenous peoples. Article 29, paragraph 1 (d) states that the education of the child should aim at preparing them for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. According to Article 30, "in those states

Discrimination", in J. Castellino and N. Walsh (eds), *International Law and Indigenous Peoples*, Leiden: Martinus Nijhoff Publishers 2005, p. 17, 33.

²⁰⁰ Committee on the Elimination of Racial Discrimination, Concluding observations on the 23rd periodic report of Finland, CERD/C/FIN/CO/23, Ministry for Foreign Affairs 19.7.2017. Finnish Translation, Paras 18-19.

²⁰¹ UN Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Sops 60/1991.

²⁰² Article 2,1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language". The committee monitoring the Convention of the Rights of the Child has noted that Article 30 places similar positive obligations on the State Parties in relation to members of indigenous peoples as does Article 27 of the ICCPR.²⁰³ The Committee has emphasized the right of indigenous peoples to social and health services and to education.²⁰⁴ In its recommendations concerning Finland, the Committee has urged the state to strengthen efforts to combat all forms of discrimination, including discrimination against children with disabilities and children from ethnic minorities.²⁰⁵ The Committee has also expressed concern on the insufficiency of health services for children provided in Sámi languages, including mental health services, therapy or psychiatric care. It has urged the state to correct this, and to ensure that Sámi children have the right to culturally sensitive education and health-care services in their own language, including for those Sámi children who live outside the Sámi homeland.²⁰⁶

Sámi women and women belonging to Sámi internal minorities are also protected by the Convention on the Elimination of All Forms of Discrimination against Women²⁰⁷ that prohibits discrimination against women and obliges the state parties to guarantee equal rights and freedoms for both sexes. This convention is essential in the Sámi context, in regards to potential discrimination against Sámi women practiced by authorities or non-Sámi parties or persons, and eventually in regards to discrimination against women within the Sámi society.²⁰⁸ Women often experience discrimination in different minority groups, based on their

²⁰³ The Committee on the Rights of the Child, CRC: "The Rights of Indigenous Children – Recommendations", 34th session, 3 October 2003, Para 4.

²⁰⁴ Ibid.

²⁰⁵ Committee on the Rights of the Child, CRC/C/FIN/CO/4, 3 August 2011, Para 25-26.

²⁰⁶ Ibid., Paras 62-63.

²⁰⁷ Convention on the Elimination of All Forms of Discrimination against Women 18.12.1979, Sops 68/86.

²⁰⁸ See the draft for the Nordic Sámi Convention submitted by the Finnish-Norwegian-Swedish-Sámi group of experts on 27.10. 2005, Expert report, p. 127.

gender. When promoting the rights of indigenous peoples, an emphasis on women's rights may also have been problematic within the communities. For example, Rauna Kuokkanen notes that patriarchal structures can manifest in the realisation of the self-determination of indigenous peoples, both when participating in decision-making and in carrying out livelihoods.²⁰⁹ However, for many indigenous women, the right to self-determination is important both from the perspective of the individual and from that of the community, and both should be taken into account in a balanced way. A strong realisation of individual self-determination supports the implementation of collective rights to self-determination.²¹⁰

The purpose of the Council of Europe Framework Convention for the Protection of National Minorities is to protect and promote the rights of European national minorities. The Convention does not specify which groups are to be considered national minorities. Finland, Norway and Sweden have all taken the view that the agreement also applies to the Sámi. The Framework Convention concerns the prohibition of discrimination, as well as the right of minorities to their culture and languages. The Committee of Ministers monitoring the implementation of the Convention has given a number of recommendations concerning the situation of the Sámi in Finland. In the recommendations given in 2017, the Committee of Ministers suggests that the Finnish Government intensify efforts to ensure that social and health care services are properly accessible in everyone's first language, including the Sámi languages. Furthermore, the linguistic rights of minorities should be ensured in the context of administrative reforms. The Committee calls on the state to support effective access to Sámi education in the Sámi homeland. It also recommends that the state increase access to Sámi education in the rest of the country where there is a significant number of Sámi children and sufficient demand for such education.²¹¹ Sámi language rights are also protected by the European Charter for Regional or Minority Languages.²¹²

²⁰⁹ Kuokkanen, Rauna, "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights", *Human Rights Quarterly* 34 (2012) p. 225–250, 226.

²¹⁰ *Ibid.* p. 247.

²¹¹ Council of Europe: Committee of Ministers Resolution CM/ResCMN (2017), 15.3.2017, on the implementation of the Framework Convention for the Protection of National Minorities by Finland. Unofficial translation into Finnish by the Ministry for Foreign Affairs 10.4.2017, p. 3.

²¹² European Charter for Regional or Minority Languages, 11.1992, Sops 23/1998.

The European Convention on Human Rights (ECHR)²¹³ likewise prohibits discrimination in Article 14 of the Convention, which recognises that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The protection against discrimination has been further strengthened by Additional Protocol 12 to the Convention, which was adopted in 2000. The Protocol secures “the enjoyment of any right set forth by law” without discrimination. Its scope is therefore broader than Article 14, which concerns only the rights guaranteed by the European Convention on Human Rights.²¹⁴ The rights of the Sámi have not yet been specifically considered in relation to discrimination in the European Court of Human Rights, and the anti-discrimination norms have not been tested in an indigenous context, although the European Court of Human Rights has investigated a few Sámi cases involving Sámi and their rights regarding traditional livelihoods, reindeer herding and fisheries.²¹⁵

4.2.2. Legal instruments on the rights of indigenous peoples

The international legal status of indigenous peoples has developed strongly over the last few decades.²¹⁶ The UN Declaration on the Rights of Indigenous Peoples

²¹³ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (SopS 85-86/1998).

²¹⁴ See in more detail, Handbook on European non-discrimination law, European Union Agency for Fundamental Rights, Council of Europe (2010), p. 78.

²¹⁵ See *Könkämä and 38 other Sámi villages v. Sweden*, 25.11.1996; *Johtti Sappmelaccat ry et al v. Finland*, 18.1.2005; *Handölsdalen Sámi village et al v. Sweden*, 30.3.2010. See in more detail, Heiskanen, H.-E., Knuutila, R., Heinämäki, L., ”Ympäristöllinen haavoittuvuus Euroopan ihmisoikeustuomioistuimen tapausten valossa”, *Oikeus* 2017 (46): 1: p. 35-55, 44-46; See also generally, Koivurova, T., ”Jurisprudence of the European Court of Human Rights Regarding Indigenous Peoples: Retrospect and Prospects,” *International Journal on Minority and Group Rights*, Nijhoff, Brill, 18 (2011), p. 1-37.

²¹⁶ See e.g. Koivurova, T. “Alkuperäiskansojen ihmisoikeudet”, in T. Koivurova and E. Pirjatanniemi (eds), *Ihmisoikeuksien käsikirja, Tietosanoma*, 2013: 246-269; Heinämäki, L., “The Rapidly Evolving International Status of Indigenous Peoples: The Example of the Sámi People in Finland”, in C. Allard and P. Fundarug Skogvang (eds), *Indigenous Rights in Scandinavia, Autonomous Sami Law*, Ashgate, 2015: 189-206.

(UNDRIP)²¹⁷, adopted in 2007, embodies the rights and principles that human rights supervisory bodies, such as the UN Human Rights Committee, have been verifying in their case law and statements over the years. Some of the rights of the UNDRIP on the Rights of Indigenous Peoples are already included in existing national legal systems, such as the recognition of Sámi as an indigenous people in the Finnish Constitution. The UNDRIP has also influenced the interpretations of bodies monitoring the implementation of human rights, in particular by strengthening the right of indigenous peoples to participate in decision-making concerning them in legal cases related to land use.²¹⁸ The UNDRIP also has a strong mandate from the indigenous peoples since their organisations actively participated in the negotiations over the whole of the twenty-year process.²¹⁹

At the core of the whole Declaration is the recognition of the right to self-determination of indigenous peoples. Article 3 states that indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. According to Article 4, indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.²²⁰ Although Article 3 on self-determination and Article 4 on self-government, as interpreted by several international law experts, are intended to be read together,²²¹ this is not considered to limit the self-determination only to the internal affairs of the indigenous peoples.²²²

²¹⁷ UN Declaration on the Rights of Indigenous Peoples, September 7, Sixty-first Session, A/61/L.67.

²¹⁸ *Poma Poma v. Peru*, Human Rights Committee, Communication No. 1457/2006, Doc. CCPR/C/95/D/1457/2006 of 27 March 2009; *Saramaka v. Suriname*, Inter-American Court of Human Rights, Judgment of November 28, 2007, Series c, No 172.

²¹⁹ See Rombouts, P. J., *Having a Say - Indigenous Peoples*, International Law and Free, Prior and Informed Consent, Oisterwijk: Wolf 2014, p. 14-15.

²²⁰ Article 4.

²²¹ International Law Association, Interim Report: The Right of indigenous peoples at the Hague Conference (London: ILA 2010) p. 9-12.

²²² E.g. Xanthaki, A., "Indigenous Rights in International Law over the Last 10 Years and Future Developments", 10 *Melbourne Journal of International Law* (2009) p. 27, 30.

The right to self-determination is implemented in the right of ownership and participation, for example, in land use and the accompanying protection of traditional livelihoods.²²³ According to Article 32 of the UNDRIP, indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Under Article 19, States shall also consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their prior consent before adopting and implementing legislative or administrative measures that may affect the indigenous peoples.

Although the UNDRIP does not give indigenous peoples a unilateral opportunity to say no (exercise a right of veto) to state measures, following the adoption of the UNDRIP (2007), the Human Rights Committee has stated that, in large-scale matters, consultation is no longer sufficient; land use requires prior consent of the indigenous people.²²⁴ The UN Committee has also applied Article 1 of the International Covenant on Civil and Political Rights (indigenous peoples' right to self-determination), often combining Articles 27 and 1.²²⁵ In the UNDRIP, free, prior and informed consent can be seen as an integral aspect of self-

²²³ See generally Heinämäki, L., “The Nordic Saami Convention: The Right of a People to Control Issues of Importance to Them”, in N. Bankes and T. Koivurova (eds), *The Proposed Nordic Saami Convention, National and International Dimensions of Indigenous Property Rights*, Hart Publishing, Oxford and Portland, Oregon, 2013: p. 125-147;

²²⁴ *Poma Poma v. Peru*, Human Rights Committee, Communication No. 1457/2006.

²²⁵ E.g. Concluding observations on the Sixth periodic report of Finland, CCPR/C/FIN/CO/6, 22 August 2013, para 16 and several statements in a previous footnote 189.

determination.²²⁶ However, the UN Committee sees it as a component of the right of individuals to culture in accordance with Article 27 of the ICCPR.²²⁷

Under Article 2 of the UN Declaration on the Rights of Indigenous Peoples, indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

The principle of non-discrimination is also a key part of the UN Declaration. In accordance with Article 21 of the Declaration, indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. The second paragraph of the same article notes that states shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.²²⁸ According to Article 24 indigenous individuals have the right to non-discrimination in accessing all social and health services, and to the enjoyment of the highest attainable standard of physical and mental health.²²⁹ Article 22 notes that a particular attention shall be paid to the rights and particular needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of the UNDRIP.²³⁰ Furthermore, Article 23 stipulates that indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such

²²⁶ Ward, T., "The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law", 10 *Northwestern Journal of International Human Rights* (2011), p. 58. See a more detailed analysis, Heinämäki, L., "Global Context – Arctic Importance: Free, Prior and Informed Consent – A New Paradigm in International Law Related to Indigenous Peoples", in Herrmann and Thibault (eds), *Indigenous Peoples' Governance and Protected Areas in the Circumpolar Arctic*, Springer, 2015: p. 209-240.

²²⁷ *Poma Poma v. Peru*, Human Rights Committee, Communication No. 1457/2006.

²²⁸ Article 21.2.

²²⁹ Article 24.2.

²³⁰ Article 22.1.

programmes through their own institutions. According to Article 44, all the rights and freedoms recognised in the UN Declaration are equally guaranteed to male and female indigenous individuals.

Finland, Norway, and Sweden, in co-operation with their respective Sámi Parliaments, negotiated the drafting of the Nordic Sámi Convention that was finalised and initialed in Finland in January 2017.²³¹ At the time of this report's release, the text of the Convention is still under consultation. All three Sámi Parliaments must also approve the Convention before it can be ratified. In accordance with the first article of the Sámi Convention, the objective of the convention is to affirm and strengthen such rights of the Sámi people that are necessary to secure and develop its culture, its languages and its society, with the smallest possible interference of the national borders.²³² However, according to arguments in the draft for the Convention (2005), the Convention has several purposes. It seeks, among other things, to strengthen the status of the Sámi as an indigenous people in the three contracting states, and to make such legal conclusions that follow from the position of the Sámi as an indigenous people.²³³ The Nordic Sámi Convention is not a framework agreement, but it expressly intends to protect positive minimum rights for all Sámi people living in the Nordic countries, the most important of them being the right to self-determination of the Sámi, in the light of which the whole Convention should be considered and interpreted. The right to self-determination should be the common denominator in the exercise of the rights protected by the Sámi Convention related to language, education and livelihoods.

The protection of non-discrimination guaranteed by the Sámi Convention is also a central provision in the light of the object and purpose of the agreement. According to Article 7 of the Sámi Convention, the Sámi people shall be ensured protection against discrimination related to Sáminess: "The States shall adopt special positive measures to prevent discrimination and prejudice against the

²³¹ The Ministry of Justice, 13.1.2017, http://oikeusministerio.fi/artikkeli/-/asset_publisher/pohjoismainen-saamelaisopimus-parafoitu.

²³² Article 1.

²³³ Nordic Sámi Convention. Draft by the Finnish-Norwegian-Swedish-Sámi group of experts submitted on October 27, 2005, p. 153-154. https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samskonvensjonen_finsk_h-2183-f.pdf.

Sámi, and to promote mutual respect and understanding between the Sámi and the rest of the population.” The prohibition of discrimination under Article 7 must be read in the light of what is stated in the preamble. There the parties agree that, in determining the legal status of the Sámi people, particular regard shall be paid to the fact that historically the Sámi have not been treated as a people of equal value, and have thus been subjected to injustice. Immediately after this, it is noted that the Sámi people aspire and wish to take responsibility for the development of their own future, and that is also their right, and that the States will consider the right of the Sámi to self-determination when fulfilling their obligations under this Convention.²³⁴ The aim of the prohibition of discrimination is real equality, which can best be achieved when the State supports the Sámi with positive legal and economic measures, so that they have a real opportunity to assume responsibility for defining their own future and priorities in accordance with their right to self-determination. The Sámi Convention does not specify specific groups within the Sámi that are in particular danger of discrimination and are subject to the protection of non-discrimination. Naturally, it is clear that this provision has a particularly important role for minority groups, such as people with disabilities and sexual and gender minorities.

The agreement includes protection regarding the equality of women and men.²³⁵ Although Article 5 concerns the equality of men and women, it calls for the safeguarding of rights without discrimination on grounds of gender. The Parliament’s Employment and Equality Committee, in its report on the amendment to the Equality Act carried out in 2005, noted that the provisions of the Equality Act should be interpreted so that they also cover discrimination based on gender reassignment. According to the Committee, it is important for the human rights of those persons to be protected from all forms of discrimination and differentiation, and it considered that the provisions on discrimination in the Equality Act should be interpreted in a manner consistent with the position of the European Court of Justice.²³⁶

²³⁴ Preamble to the Sámi Convention.

²³⁵ Article 5.

²³⁶ The Parliament’s Employment and Equality Committee, TyVM 3/2005 vp; The Government Bill, HE 19/2014.

The Ombudsman for Equality has considered that – at least until the matter is defined in legislation – the Equality Act should be extensively applied to gender minorities, and not restricted to persons who have undergone gender-reassignment.²³⁷ The purpose of the reformed Equality Act, according to Section 1, is to prohibit discrimination based on gender, and to promote equality between women and men and, to this end, to improve the status of women, especially in the workplace. The Act also aims to prevent discrimination on the grounds of gender identity or gender expression.²³⁸ The Nordic Sámi Convention must also be interpreted in the light of the Constitution and the equality and non-discrimination provisions, and in light of existing international law, such as the decisions of the European Court of Justice.

Article 21 of the Nordic Sámi Convention provides linguistic rights and states that “the States should promote” the use of the Sámi language in social and health care in Sámi homeland, and to “facilitate” the use of the Sámi language outside the Sámi regions. In the field of social and health care services, States “take into account” aspects of Sámi culture. The formulation of the Article cannot be considered legally strong, because it requires that the states promote rather than directly safeguard the linguistic rights of the Sámi, though they are constitutional rights for the Sámi. As mentioned earlier in this section, the realisation of linguistic rights in health care is essential to Sámi persons with disabilities, and to Sámi people belonging to sexual and gender minorities.

Despite numerous efforts, Finland has so far not ratified the ILO Indigenous and Tribal Peoples Convention (No. 169)²³⁹ that protects the rights of indigenous peoples. However, the government bill to ratify the Convention is still pending in the Parliament.²⁴⁰ Yet, Finland did sign ILO Convention 169 in 1989. The central rights and fundamental principles of ILO Convention 169 have since been recognised in state practice, in the jurisprudence of the bodies that monitor

²³⁷ The Government Bill, HE 19/2014.

²³⁸ Act on Equality Between Women and Men, Laki naisten ja miesten välisestä tasa-arvosta annetun lain muuttamisesta, 1329/2014. 1329/2014.

²³⁹ International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, adopted 27.6. 1989, entered into force 5.9.1991, 28 International Legal Materials (1989) 1382.

²⁴⁰ The Government Bill, HE 264/2014.

universal human rights, as well as in the UN Declaration on the Rights of Indigenous Peoples. Article 18 of the Vienna Convention²⁴¹ instructs the State not to take any measures, which render the object and purpose of the signed agreement null and void. As in other human rights conventions, the protection of equality and non-discrimination are the core principles of the ILO Convention 169. Under the Convention, States must take measures to ensure that members of indigenous communities enjoy equal rights and opportunities that are accorded to the rest of the population under national laws and regulations, promote the full implementation of the social, economic and cultural rights of these peoples, respecting their social and cultural identity, traditions and institutions, and help the members of these peoples to overcome the socio-economic disparities between indigenous peoples and the rest of the national community, in ways compatible with the indigenous people's aspirations and way of life.²⁴² According to Article 3 of the ILO Convention 169, indigenous and tribal peoples must enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples. Positive special measures to promote equality include all areas of life, including linguistic rights and land rights. The Government bill (HE 264/2014) concerning the ratification of the ILO Convention 169 mentions equality and non-discrimination in the reform of the Equality Act to include also discrimination on the basis of gender identity and gender expressions.²⁴³

The International Labour Organization (ILO) has devoted particular attention to the elimination of non-discrimination and the enhancement of rights of indigenous persons with disabilities. In a report published in 2015, the ILO provides a reminder in referring to the views of the UN Convention on the Rights of Persons with Disabilities, that the challenges of persons with disabilities in access to employment, education and special support related to disability, can

²⁴¹ Decree on the implementation of the Vienna Convention on the Law of Treaties 33/1980.

²⁴² ILO Convention 169, Article 2. See the Government Bill, HE 264/2014.

²⁴³ The Government Bill, HE 264/2014, part I, Yleiset periaatteet.

lead to poverty traps, especially among indigenous peoples.²⁴⁴ In addition to the principle of non-discrimination, the ILO report stresses the right of indigenous persons with disabilities to participate in decision-making as well as working life and related training.²⁴⁵

²⁴⁴ International Labour Organization, *Indigenous Persons with Disabilities, Access to Training and Employment*, ILO 2015, p. 2. ILO is referring to reports on Argentina, Australia, Peru and Costa Rica.

²⁴⁵ *Ibid.* p. 2.

5. Sámi persons with disabilities

Studies surrounding Sámi persons with disabilities have only emerged in the field of research in recent years. Due to the increased debate on people with disabilities and their human rights, more attention has been paid to the role of indigenous people with disabilities in societies. Finland ratified the UN Convention on the Rights of Persons with Disabilities in 2016²⁴⁶, and has raised the rights of persons with disabilities as one of the priorities of its international human rights policy²⁴⁷.

This chapter first introduces the general theoretical discussion in the field of disability research and looks at the nature of the concurrent debate carried out from the viewpoint of indigenous peoples. After that, we will describe research on the situation of Sámi persons with disabilities and discuss their position in the Sámi community. We will also discuss Finland's human rights policies concerning persons with disabilities. We will discuss the implementation of their human rights and the challenges in national law, paying close attention to their implications for Sámi persons with disabilities. Finally, we will discuss multiple discrimination faced by Sámi persons with disabilities and the ways in which discrimination can be prevented in the future. The last section is based on three semi-structured personal interviews and on an expert interview conducted during our project, as well as an active dialogue with an expert of the SámiSoster association that represents Sámi persons and also persons with disabilities. The chapter also discusses examples of discrimination mentioned in Hokkanen's work (2017) *Experiences of inclusion and welfare services among Finnish Sámi*.

5.1. The Phenomenon of disability

Disability is linked, inter alia, to different cultures, and to the context in which disability is discussed.²⁴⁸ Disability has been studied in a number of disciplines

²⁴⁶ A/RES/61/106.

²⁴⁷ The Ministry for Foreign Affairs of Finland, Ulkoasiainministeriö, Suomen kansainvälinen ihmisoikeuspolitiikka, Available at: <http://formin.finland.fi/public/default.aspx?nodeid=49583>.

²⁴⁸ See e.g. Kröger, Teppo, "Tutkimuksen kolme näkökulmaa vammaisuuteen", *Janus: Sosiaalipolitiikan ja sosiaalityön tutkimuksen aikakauslehti*, 10 (1), 27-38, (2002); Haarni, Ilka,

from a variety of viewpoints, and theoretical discussion on the subject has partly followed the general philosophical discourses of each era.²⁴⁹ Given that a human rights approach to disability is essential for this report, we use the interpretation of the UN Convention on the Rights of Persons with Disabilities as one possible way to look at the phenomenon of disability. The Convention does not have a formal definition of disability, but the main principles of the social model of disability are largely at the core²⁵⁰.

From a human rights point of view, disability cannot be determined entirely on the basis of certain characteristics of a person, but these characteristics must always be related to the social context in which disability can occur²⁵¹. The UN Convention²⁵² states that:

*"[...] disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others."*²⁵³

Furthermore, the Convention defines that persons with disabilities include:

*"[...] those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."*²⁵⁴

Keskeneräistä yhdenvertaisuutta, Vammaisten henkilöiden hyvinvointi ja elinolot Suomessa tutkimustiedon valossa, Stakesin raportteja 6/2006, Helsinki: Valopaino Oy (2006), p. 11-12; Ariotti, Louis, "Social construction of Anangu disability", *Aust. J. Rural Health* 7, 216-222 (1999); Meekosha, Helen, "Decolonising disability: thinking and acting globally", *Disability & Society*, 26:6, 667-682, (2011); Rivas Velarde, Minerva, *Indigenous Persons with Disability, Access to Training and Employment*, International Labour Organization, Switzerland (2015), p. 6-8.

²⁴⁹ See e.g. Kröger (2002).

²⁵⁰ Rivas Veralde (2015), p. 7. A/RES/61/106 Preamble part e, article 1.

²⁵¹ Rautiainen, Pauli, Lavapuro, Juha, Hartzell, Jari, Lehtinen, Emma, Meriläinen, Niina, Neuvonen, Riku & Todorov, Elina, *Ihmisoikeusindikaattorien käyttäminen Suomen perus- ja ihmisoikeustilanteen seurantaan, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja (36/2016)*, p. 82.

²⁵² A/RES/61/106, Preamble, part e.

²⁵³ A/RES/61/106, Preamble, part e.

²⁵⁴ A/RES/61/106, Article 1.

The method of understanding disability presented in the Convention also seeks to develop the national legislation and policies of the states to adopt a more comprehensive definition of disability.²⁵⁵ When disability is examined through the human rights model, attention is naturally paid to the human rights of persons with disabilities and the realisation and implementation of these rights.²⁵⁶

In the United Kingdom, a social model of disability emerged and was shaped to support the disability movement of the 1970s that regarded disability as the relationship between persons who had an impairment and a discriminating society.²⁵⁷ Later, Michael Oliver (1990) among others, who is seen as one of the key scholars of the social model of disability, defined the social model of disability based on the ideology of the disability movements.²⁵⁸ In other words, Oliver (1992) sees disability as socially produced.²⁵⁹

At the same time, the Nordic countries' critical views on the medical approach to explain disability began to emerge.²⁶⁰ The Nordic relational model of disability defines disability as a relative phenomenon, where it is seen to occur in situations where there is a gap between an individual's actions and the environment or social demands. Disability is therefore bound to certain situations and environments, and not so much a characteristic of a person that would be present in all situations.²⁶¹ Tøssebro (2004) uses as an example of this proportionality an example of a blind person who, when talking to a phone, is not a disabled person, and in a dark environment they may be particularly functional.²⁶²

²⁵⁵ Rivas Veralde (2015), p. 7

²⁵⁶ Haarni (2006), p. 11.

²⁵⁷ Shakespeare, Tom, "Social models of disability and other life strategies", *Scandinavian Journal of disability Research*, 6:1, 8-21 (2004), p. 9. See also Kröger (2002). Definition drafted by UPIAS (Union of Physically Impaired against Segregation) in 1976 in the document *Fundamental Principles of Disability* (Shakespeare (2004), p. 9.).

²⁵⁸ Shakespeare (2004), p. 9. See in general also Oliver, Mike, *The Politics of Disablement*, Basingstoke: Macmillan (1990).

²⁵⁹ Oliver, Mike, "Changing the Social Relations of Research Production?", *Disability, Handicap & Society*, 7:2, 101-114, (1992), p. 101. See also Rivas Veralde (2015), p. 7.

²⁶⁰ Tøssebro, Jan, "Introduction to the special issue: Understanding disability", *Scandinavian Journal of Disability Research*, 6:1, 3-7, (2004); Shakespeare (2004), p. 8.

²⁶¹ Tøssebro (2004), p. 4. See also Kröger (2002).

²⁶² Tøssebro (2004), p. 4.

According to Kröger (2002), the WHO 1980 ICIDH categories (International Classification of Impairments Disabilities and Handicaps) were also based on the view of disability as a relationship between the person and their environment. This classification was criticised because in practice it was eventually considered to be based on the individual and their approach to a given disability.²⁶³ The ICF (International Classification of Functioning), which was published in 2001, replaced the ICIDH rating²⁶⁴ and is based on a biopsychosocial model²⁶⁵. In this model, disability is seen as a multidimensional phenomenon that arises in interaction with the character of a person and their physical, constructive, attitudinal, social and political environment.²⁶⁶ It is considered to have been influenced by both the medical and the social models.²⁶⁷ The ICF classification defines different health components as well as some related welfare components and can also be seen as providing a unified international language for describing functional health and functional status related to health.²⁶⁸

For their part, the above models have challenged the medical model that approaches disability from an individual point of view, where disability is classified by the biological characteristics, defects or illnesses of a person²⁶⁹. Although the debate on the concept of disability has been considerably diversified in recent decades, and awareness of the multidimensional nature of the phenomenon has grown, there are still some gaps in the reflection of these developments. Since this report focuses specifically on the rights of people with disabilities belonging to indigenous peoples and the multiple discrimination they

²⁶³ Kröger (2002).

²⁶⁴ WHO, ICF, Toimintakyvyn, toimintarajoitteiden ja terveyden kansainvälinen luokitus, World Health Organization, Stakes, Ohjeita ja luokituksia, Tampere: Juvenes Print – Suomen yliopistopaino Oy (2004:4). See also Kröger (2002).

²⁶⁵ Bickenbach, Jerome E. “Monitoring the United Nation’s Convention on the rights of Persons with Disabilities: data and International Classification of Functioning, Disability and Health”, *BMC Public Health*, 11(Suppl 4), (2011), p. 8. See also Rivas Velarde (2015), p. 7 & World Health Organization (2004).

²⁶⁶ Bickenbach (2011), p. 8. See also Rivas Velarde (2015), p. 7.

²⁶⁷ WHO, World Report on Disability, WHO and World Bank, Malta 2011, p. 5.

²⁶⁸ WHO (2004), p. 3.

²⁶⁹ See e.g. Vehmas, Simo, ”Yksilön vai yhteisön vika? – vammaisuus-käsitteen moraalifilosofista tarkastelua”, in Karjalainen, Vappu, Vilkkumaa, Ilpo (eds.), *Kuntoutus kanssamme, Ihmisen toimijuuden tukeminen*, Stakes, Tampere: Juvenes Print – Suomen Yliopistopaino Oy, 41-52, (2012), p. 43, Tøssebro (2004), p. 3, Oliver (1992).

face, it is essential to point out that indigenous discourses have not been taken into account in these models²⁷⁰.

The views of indigenous peoples on disability have only recently begun to be researched. Based on these studies, it has been noted that the concept of disability is strange to some indigenous communities. In addition, in some cases Western, and often European, models of understand the meaning of the concept are very different from those of indigenous communities.²⁷¹ Some indigenous people, at least to some extent, reject the whole concept of disability or its related conceptualizations.²⁷²

Differences in concepts and different ways of seeing disability were also reflected in the results of a survey conducted among Sámi persons with disabilities. In Sámi languages, various kinds of impairments can be described in a way that is typical to the language, using, for example, metaphorical expressions. There are sometimes no official words to describe each different kind of disability. In addition, in the Sámi culture, it seems to be typical that, for example, illnesses are not discussed directly or by using diagnostic terms. Some Sámi also see disability to some degree as part of natural variation, and it has been important to find a functional role in the community for persons with disabilities as well.²⁷³ In an interview in this study, it emerged that in some cases in the North Sámi language, a person with a disability may have been described earlier by the words *earenoamáš olmmoš*, which mean an *excellent or special person*. However, in the expert interview carried out during our project we also learned that the North Sámi have also used some less positive expressions to describe persons with disabilities²⁷⁴.

²⁷⁰ Rivas Velarde (2015), p. 7.

²⁷¹ See e.g. Ariotti (1999), Rivas Velarde (2015), p. 6.

²⁷² Rivas Velarde (2015), p. 6.

²⁷³ Melbøe, Line, Johnsen, Bjørn-Eirik, Fredreheim, Gunn Elin, Hansen, Ketil Lenert, *Situasjonen til samer med funksjonsnedsettelse*, Nordens Velfærdscenter (2016a), p. 13, Melbøe, Line, Hansen, Ketil Lenert, Johnsen, Bjørn-Eirik, Fredreheim, Gunn Elin, "Ethical and methodological issues in research with Sámi experiencing disability", *International Journal of Circumpolar Health*, 75:1 (2016b). See also Uttjek, Margaretha, *Levnadsförhållanden bland samer med funktionsnedsättning i Sverige*, Nordens Velfærdscenter (2016), p. 47-48.

²⁷⁴ Interview: SámiSoster ry, Ristenrauna Magga, 13.9.2017.

Today all three Sámi languages spoken in Finland have their own word to describe a person with a disability. In North Sámi the words are *lámis*, *lámisolmmoš* or *doaimmashehttejuvvon*, in Skolt Sámi *lää'mes*, and in Inari Sámi *váduláš*. In North Sámi the word *lámis* was originally used to specifically describe a person's mobility impairment²⁷⁵, but now it is used to describe persons with disabilities in general, in the same way as the words *vammainen henkilö* in Finnish. *Doaimmashehttejuvvon* translated directly is functionally impaired, and can also be used as a general description of a person with a disability²⁷⁶. In Inari Sámi, the term *váduláš* has recently been introduced as the norm to correspond to Finnish terms in social services and health care, because previously the Inari Sámi language usually described a person with a disability using words related to the impairment²⁷⁷. In the above examples, there are interesting similarities with the introduction of the term 'disabled' in Australia among the Anangu, described in an article by Ariotti (1999). As the language of the Anangu originally did not have a term meaning a person with a disability, they gave a new meaning to the word *nyumpu* that was already in use. The word *nyumpu* originally signified crippled or maimed in the Pitjantjatjara language, but has since been generally adopted and used when discussing persons with disabilities. Some persons with disabilities who are members of the community are insulted if they are referred to with the word *nyumpu* because they consider that the word labels them and stigmatizes them as belonging a certain social compartment.²⁷⁸

As in the case of the Inari Sámi language, in the Pitjantjatjara language, a person with a disability was also described by referring to a specific feature or impairment. According to Ariotti (1999), this explains that among the Anangu, for example, there was no need to distinguish people with disabilities from the rest of the community by one abstract term.²⁷⁹ The use of such terms in the Pitjantjatjara language indicates that people with certain particular needs and / or impairments were accepted as a natural part of the community and were seen as

²⁷⁵ Sammallahti, Pekka, Saamelais-suomalais-saamelainen sanakirja, Girjegiisá Oy, Ohcejohka 1993. 5 edition (2013).

²⁷⁶ Emails with the North Sámi language employee in Giellagáldu, 11.10.2017.

²⁷⁷ Emails with the Inari Sámi language employee in Giellagáldu, 9.10.2017.

²⁷⁸ Ariotti (1999), p. 219.

²⁷⁹ Ariotti (1999), p. 218.

part of the diversity of humankind²⁸⁰. As stated earlier²⁸¹, similar attitudes also emerge in the report of Melbøe and co (2016a) and Uttjek (2016) concerning some Sámi²⁸². We do not claim that the development would have been the same for Sámi terms or Sámi communities, as for example in the case of Anangu, but that the similarities with regard to the development of terminology are obvious. This makes us reflect on how people with disabilities have been referred to earlier in the Sámi languages, and whether the attitudes towards them have changed as the terminology has evolved. In addition, it would be useful to study whether there have been different views about the status of people with disabilities and ideas about disability between the different Sámi groups and within them.

5.2. On the history of disability and on disability research

The status of people with disabilities and the implementation of their rights in society is strongly linked to the prevailing societal view of disability in each society, community and time period.²⁸³ Currently, the academic discourse on the topic is very abundant and diverse. Therefore, we will briefly outline how discourse, thoughts and attitudes toward disability have evolved over time.

Historically, disability has sometimes been seen as a result of moral offences committed by a person or their parents, and has been thought to be a divine punishment for sins.²⁸⁴ According to Rivas Velarde (2014), this view, arising out of many Christian traditions, has been passed also from Europe to colonial lands and the indigenous peoples living there.²⁸⁵ In recent years, studies conducted among Sámi people living in Norway have shown that, in the past, the Sámi also

²⁸⁰ Branson, Jan, Miller, Don, “Normalisation, community care and the politics of difference”, *Australian Disability Review*, 4:17-28 (1992), p. 18. See also Ariotti (1999), p. 218.

²⁸¹ See this report p. 67.

²⁸² Melbøe et al. (2016a), p. 13; Uttjek (2016), p. 47-48.

²⁸³ See e.g. Haarni (2006), p. 11.

²⁸⁴ Vehmas (2004), p. 43.

²⁸⁵ Rivas Velarde, Minerva Concepción, *The Convention on the Rights of Persons with Disabilities and its implications for the health and wellbeing of indigenous peoples with disabilities. A Thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy*, Sydney Medical School, University of Sydney (2014), p. 36-37.

believed²⁸⁶ that illnesses in particular were a punishment for a person having done something wrong.²⁸⁷ Before the spread of Christianity among the Sámi, illness could be seen in ancient Sámi religions as the result of evil forces trying to take possession of a person's life.²⁸⁸

Later on, disability began to be understood within the frame of reference of medical research²⁸⁹. In their article on the medicalisation of disability from a historical perspective, Hayes and Hannlod (2007) refer to views expressed by Foucault (1980), such as the view that the development of medical institutions during the Enlightenment led to the emergence of discourses controlling the body of individuals. Politics began to appear in various fields of knowledge, and the management of societies expanded to cover not only the traditional governing of regions, but also, in some respects, the bodies of individuals. Medical discourses were quickly adopted in other areas of society, and gradually the body began to be seen as an object that was possible to “repair” or “improve”.²⁹⁰ When the characteristics of humans began to be measured by different means, it became possible to categorise them based on these characteristics as well. As a result of such categorisation, one category could be given a higher value than another. In the worst case, these categorisations were used to marginalise people, weakening the value of those who were seen as representing the ‘other’ category with a lower given value. The biomedical model for explaining disability has been criticised for contributing to the idea of a norm of biological health, and an accompanying idea of well-being, and for seeing disability as a deviation from this norm.²⁹¹

²⁸⁶ Melbøe et al. (2016b) points out in the article that some still think this way.

²⁸⁷ Melbøe et al. (2016b); Bongo, Berit Andersdatter, “Samer snakker ikke om helse og sykdom”. Samisk foståelseshorisont og kommunikasjon om helse og sykdom. En kvalitativ undersøkelse I samisk kultur. Avhandling levert for graden Philosophia Doctor, Universitetet i Tromsø (2012), p. 9.

²⁸⁸ Melbøe et al. (2016b). Refers in their article to Bongo, Berit Andersdatter, “Hva er en bærer?”: belysning om “en” måte å forstå psykiske lidelser på i den samiske kulturen, Tromsø: Institutt for klinisk medisin, Universitetet i Tromsø (2002).

²⁸⁹ See e.g. Vehmas (2004), p. 43.

²⁹⁰ Hayes, Jeanne & Hannold, Elizabeth “Lisa” M, “The road to empowerment on medicalization of disability”, *JHSA WINTER* (2007), p. 354. See also Foucault, Michel, *Madness and Civilization*, London: Tavistock (1980).

²⁹¹ Hayes & Hannold (2007), p. 355 & 357.

Oliver (1992) is of the view that, in the 20th century, industrial societies made disability a medical problem requiring medical intervention.²⁹² An impairment began to be seen as a disease that needs to be cured. This also led to viewing persons with disabilities as sick people, and as passive actors in society.²⁹³ In order to prevent people with disabilities from being a burden to the rest of society, new means were developed to make it easier for them to survive in “normal” everyday life. As a consequence of the medicalisation of disability, an individual model of disability developed in the 20th century that, in many ways, became a basis for the societal perception of disability.²⁹⁴ Although today's discourse has progressed in many respects, and the scientific debate in studies of disability has diversified, there is still a tendency to understand disability in everyday situations from some type of biomedical starting point.²⁹⁵ The view of disability as a characteristic of the individual has also created a foundation for many academic subjects and societal institutions. Disability has been seen as something that can be addressed by, for example, improving an individual's capacities, preventing or curing a disability, or preventing the birth of individuals with disabilities.²⁹⁶

In the 1970s and 1980s, persons with disabilities and their organisations began to strongly criticise the individual and medical model of explaining disability.²⁹⁷ They began to emphasise the importance of societal discrimination in understanding disability, and drew attention to the minority status of persons with disabilities.²⁹⁸ Efforts were made to replace the medical model with a socio-political model that identified the need for healthcare services and attempted to get rid of the idea that people with disabilities should try to be "normal". A change in the treatment paradigm was desired so that persons with disabilities could be equally involved in making treatment decisions that affected them, which would have an empowering effect.²⁹⁹ In 1986, Disabled Peoples International, a

²⁹² Oliver (1992), p. 101.

²⁹³ Hayes & Hannold (2007), p. 362-363. See also Barnes, Colin, Mercer, Geof & Shakespeare, Exploring disability, A sociological introduction, Cambridge: Polity Press (1999), p. 19-20.

²⁹⁴ Barnes et al. (1999), p. 20.

²⁹⁵ Tøssebro (2009), p. 3.

²⁹⁶ Vehmas (2004), 44. See also Tøssebro (2009), p. 3.

²⁹⁷ Barnes et al. (1999), p. 27.

²⁹⁸ Shakespeare (2004), p. 9. See also Hayes & Hannold (2007), p. 365.

²⁹⁹ Hayes & Hannold (2007), p. 365-366.

network of national disability organisations and conferences³⁰⁰, attempted to define “disability” and “impairment” and make a clear distinction between these terms. “Impairment” is seen as referring to a clearly functional restriction that results from a physical, mental or sensory injury. “Disability”, in turn, refers to a loss of ability to participate, or suppression from participation, in normal life as an equal with others due to physical or social barriers.³⁰¹

A great deal of disability-related research was previously done without involving persons with disabilities themselves, or organisations promoting their interests, in the research process. This had the effect of alienating persons with disabilities from the research field, and also affected the quality of research and reinforced the view of disability as an individual problem.³⁰² However, as the end of the 20th century approached, the aforementioned positions taken by persons with disabilities and organisations representing them had succeeded in changing the concept of disability also at a more general level. The social model, in contrast to an individual approach, involved a move towards searching for social and political solutions whereby it was possible to address discrimination in society and its structures that led to the handicapping of people with particular needs.³⁰³

The traditional or “strong social model”, as for example Shakespeare (2004) call it, has also been criticised in circles of disability research. Among other reasons, criticism has arisen due to the fact that the model does not take people's subjective and personal experiences of disability into account. It is also not seen as taking into account the complex relationship between different injuries, social relationships and personal identities. When a strong social model is too crudely applied, there is a risk of ignoring other factors affecting personal identity and experiences, such as one's status in society, race, sex or sexuality.³⁰⁴ Moreover,

³⁰⁰ Disabled People's International, About us (2012). Available at: <http://www.disabledpeoplesinternational.org/AboutUs>.

³⁰¹ Oliver, Michael, “Theories in health care and research, Theories of disability in health practice and research”, *BMJ*, 317:1446-1449 (1998), p. 1447. See also e.g. Söder, Mårten, “Tensions, perspectives and themes in disability studies”, *Scandinavian Journal of Disability Research*, 11:2, 67-81 (2009), p. 71.

³⁰² See e.g. Oliver (1992), p. 103-105.

³⁰³ Oliver (1998), p. 1446.

³⁰⁴ Shakespeare (2004), p. 12-14.

the social model is not seen as taking cultural differences into account, and is also seen as having developed in a specific context that cannot be considered neutral or universally applicable.³⁰⁵ Rivas Velarde (2014) finds this criticism very relevant in discussing indigenous persons with disabilities. In their view, the social model does not take into account indigenous peoples' representatives' own definitions and experiences of disability; nor does it take colonisation, and its implications for understanding the meaning of this concept, into account. It is therefore truly essential to consider cultural factors in order to understand what disability means in the lives of indigenous peoples.³⁰⁶

The previously highlighted Nordic approach to disability emerged from the idea that disability is about the relationship between the individual and the environment, and that manifests itself in relation to a person's environment.³⁰⁷ In the Nordic countries - unlike, for example, in the UK - disability research and its development have not been strongly linked to the activities of the organisations and movements of persons with disabilities, but have instead been built on the Nordic welfare state concept.³⁰⁸ This model emphasises the idea of the state as a responsible actor in implementing and offering equal rights and opportunities to all its citizens.³⁰⁹

However, the Nordic welfare system is not without problems. Although the Nordic countries have sought to guarantee equal access to welfare and services for all persons, this does not mean that in reality everyone would have equal opportunities to benefit from all the services offered by the society. There are various reasons for this.³¹⁰ It also emerged from the interviews in this study that,

³⁰⁵ See e.g. Barker, Clare & Murray, Stuart, "Disabling Postcolonialism, Global Disability Cultures and Democratic Criticism", *Journal of Literary & Cultural Disability Studies*, 4.3: 219-236 (2010), p. 228. See also Rivas Velarde (2014), p. 39.

³⁰⁶ Rivas Velarde (2014), p. 39.

³⁰⁷ Tøssebro (2009), p. 4.

³⁰⁸ Söder, Mårten, "Tensions, perspectives and themes in disability studies", *Scandinavian Journal of Disability Research*, 11:2, 67-81 (2009), p. 70. See also Rivas Velarde (2014), p. 41.

³⁰⁹ Rivas Velarde (2014), p. 41. Häikiö, Liisa & Hvinden, Bjørn, "Finding the way between universalism and diversity: a challenge to the Nordic model", in Anttonen, Anneli, Häikiö, Liisa & Stefánsson, Kolbeinn (eds.), *Welfare State, Universalism and Diversity*, Cheltenham: Edward Elgar Publishing Limited (2012), p. 74.

³¹⁰ See e.g. Häikiö & Hvinden (2012), p. 74.

for example, people whose first language is Sámi do not have access to all health and social services in their own language. This means that these services, which have an essential connection to welfare, are not equally accessible to everyone.³¹¹ In addition, the understanding of welfare may vary depending on people's backgrounds³¹², and when discussing Sámi people with disabilities, it is important to consider what Sámi people's perception of welfare is and how it differs from e.g. Finnish people's idea of what a good life is³¹³.

One important theme related to this report, that has come up in disability research concerning juridification³¹⁴, is the improvement of the situation of persons with disabilities through the strengthening of their individual rights. The concepts of negative and positive rights³¹⁵, - which, according to Söder (2009), may in some cases be seen as contradicting each other - should also be taken into account here. As an example, Söder describes a situation where, via positive rights, a person receives a certain right based on their disability. At the same time, however, the fact that they are treated in a certain way because of their disability can also be interpreted as discrimination in some contexts. What one person with a disability may experience as positive special treatment, another may experience as discrimination. Internationally, negative rights, such as anti-discrimination legislation, are viewed positively especially in Western countries, and are seen as a means of protecting people with disabilities as well. However, Söder points out that it should be carefully considered, particularly in Scandinavia, how the

³¹¹ See also Interview: Sámi Soster, Ristenrauna Magga, 13.9.2017; Saamelaiskäräjät, Posken saamelaisyksikkö, Lehtola, Riitta, Ruostala Pia, Saamenkielisten palveluiden nykytilan kartoitus, saamelaislasten, nuorten ja perheiden palvelut (1/2017); Hokkanen (2017), at the printers.

³¹² See e.g. Häikiö & Hvinden (2012); Hokkanen (2017), at the printers.

³¹³ See e.g. Heikkilä, Lydia, Laiti-Hedemäki & Pohjola, Anneli, Saamelaisten hyvä elämä ja hyvinvointipalvelut, Rovaniemi: Lapin yliopistokustannus (2013), p. 49-58.

³¹⁴ Juridification can be seen partly as a result of globalisation that has taken place, as the power of nation states have declined, international agreements have been used to help achieve different goals. On the other hand, it may also be seen as a result of the deterioration of the collective actions and position of states' welfare patterns, and of relying on the individual's rights in protecting the marginalised groups, for example. (Söder (2009), p. 76).

³¹⁵ Positive rights refer to rights which, for example, impose certain obligations on states, while negative rights refer to abstention from certain activities for example obligations to refrain from discriminating against persons with disabilities. (Söder (2009), p. 77-78.)

welfare state model and an emphasis on individual rights ultimately relate to each other.³¹⁶

Intersectionality is also a relatively recent approach in the field of disability research, and needs to be taken into account in light of the research design of this report, and therefore we will discuss it in more detail in chapter 3.2.1. In disability research, there is debate on whether disability should be observed in the intersectional approach from a subjective or from a structural viewpoint. The subjective approach refers to a viewpoint concentrating on the identity of the person, where the person belongs to several different categories at the same time, and those categories form their identity. The structural approach concentrates on the power structures formed in society between the different categories.³¹⁷

5.3. Previous research on Sámi persons with disabilities

There is not much research available on Sámi persons with disabilities, especially not in Finland. A study commissioned by Nordic Welfare Centre in 2014, *Personer med funktionsnedsättning och Samisk bakgrund*, noted that research on persons with disabilities with a Sámi background is generally limited. In Norway and Sweden, there have been studies on the state of health of Sámi persons with disabilities. The studies have shown that apart from some diseases and some sectors of context-specific health issues, there are no major differences in health between the Sámi population and the Swedish or Norwegian population. In Finland and Russia, it is more difficult to make estimates, as there is little documented information on the subject.³¹⁸

Based mainly on research carried out in Norway and Sweden, the Nordic Welfare Centre report (2014) points out that the information available also varies concerning different sectors, impairments and illnesses. For example, there is almost no research on physical injuries, such as reduced mobility, or sensory injuries concerning Sámi persons. Studies on learning disabilities and cognitive

³¹⁶ Söder (2009), p. 78.

³¹⁷ Söder (2009), p. 74-76.

³¹⁸ Nordic Welfare Centre, Kunskapsläte: Personer med funktionsnedsättning och samisk bakgrund, Nordens Välfärdscenter (2014). See also Melbøe et al. (2016a), p. 24.

disorders have also been few and rather fragmented. The most extensive research data was found on disabilities related to mental disorders, where the subject has been studied in the 21st century in several research projects and dissertations. In addition, research into cultural understanding, cooperation and trust are also relatively available.³¹⁹

The Norwegian Directorate for Children, Youth and Family Affairs, Bufdir³²⁰ initiated a Nordic project for a systematic collection of data on Sámi persons with disabilities. The information obtained is intended to lay the groundwork for a better understanding of the lives and situations of persons with disabilities with Sámi origins, and map the aforementioned data.³²¹ Five research reports have already been published in the project, dealing with issues related to the life of Sámi persons with disabilities, such as opportunities for their social participation³²². The report of the project carried out in Finland was published in November 2017³²³ and at the same time another new report was published in the project: *Kartlegging av levekårene til personer med utviklingshemming i samiske områder*³²⁴.

Based on the information gathered from the project carried out in Norway, at least two articles have been published in addition to the research reports. *Ethical and methodological issues in research with Sámi experiencing disability*³²⁵ and

³¹⁹ Nordic Welfare Centre (2014), p. 27-28.

³²⁰ Barne-, ungdoms- og familiedirektoratet, About us (19.9.2016) Available at: https://www.bufdir.no/en/English_start_page/About_us/.

³²¹ Nordic Welfare Centre (2014), p. 4-5.

³²² Melbøe et al. (2016a); Uttjek (2016), Edin-Liljgren, Anette & Flykt, Kia, Glesbygdsmedicinskt centrum, Västerbottens läns landsting, Forutsättningar och villkor för samer med funktionsnedsättning i de samiska förvalningskommunerna i Sverige, Nordensä välfärdscenter (2017); Hokkanen (2017); Gjertsen, Hege, Melbøe, Line, Fedreheim, Gunn Elin & Fylling, Ingrid, Kartlegging av levekårene til personer med utviklingshemming i samiske områder, Nordens välfärdscenter (2017). When the original Finnish edition of our report was written before November 2017, two last reports of Hokkanen (2017) and Gjertsen et.al (2017) were not published at the time and due to this reason they are not analysed more comprehensively in in this chapter.

³²³ Hokkanen (2017).

³²⁴ Gjertsen et.al (2017).

³²⁵ Melbøe et al. (2016b).

*Demokratisk deltagelse blant mennesker i en dobbel minoritetssituasjon som same og funksjonshemmet*³²⁶.

The first study report, *Situasjonen til Samer med funksjonsnedsettelse* (Melbøe et al., 2016), was published in April 2016 and is based on 31 interviews with Sámi persons with disabilities and/or their close relatives or guardians living in Norway in the Northern Sámi, Lule Sámi and Southern Sámi language areas. The study raises a number of issues within the Norwegian welfare system, where a Sámi person with a disability does not necessarily have an equal opportunity to access culturally-sensitive services that take Sámi values into account. Services are usually tailored to accommodate the needs of the majority population, resulting in Sámi persons with disabilities facing both cultural and linguistic challenges within the support system. In their everyday lives, informants discuss the challenges they face, among other things, in the school environment and in working life. The challenges related to education include access to education in Sámi languages. In addition, Sámi persons with disabilities are reported to face discrimination by both Norwegian and Sámi pupils. One of the challenges concerning access to work is, for example, the fact that in Norway, the support system focuses more on a person's disability than their Sámi status. However, many people interviewed by Melbøe and partners (2016) still want to work in the traditional Sámi livelihoods. According to the study, Sámi persons with disabilities participate actively in the processes of democracy, and express that in many contexts they feel that they need to defend the interests of the Sámi people in general.³²⁷

In a study *Levnadsförhållanden bland samer med funktionsnedsättning i Sverige* (Uttjek, 2016) published in Sweden in the same year, seven interviews were conducted in Sweden among Sámi adults with knowledge and experience of disability, and among children with disabilities.³²⁸ The main theme that rose in the study is the desire of the informants to maintain contact with their Sámi origins in their everyday life, and to make the Sámi society visible to the majority

³²⁶ Fedreheim, Gunn Elin, Melbøe, Line & Opsal, Kari-Anne, "Demokratisk deltagelse blant mennesker i en dobbel minoritetssituasjon som same og funksjonshemmet", *Norsk statvitenskapelig tidsskrift*, Vol 33235-253 2017, (2017).

³²⁷ Melbøe et al. (2016a), p.13-14.

³²⁸ Uttjek (2016), p. 25.

population. It also emerged that instead of concentrating on their disability or diagnosis, Sámi persons with disabilities emphasized their abilities and the ways they are making their everyday life function, as well as the importance of their close ones in their everyday life. The welfare system is not considered to respond to the needs of support and assistance of Sámi persons with disabilities in Sweden either. The report notes that the Swedish legislation should be revised to better correspond to the rights of Sámi persons with disabilities as representatives of an indigenous people and as persons with disabilities. It would also be necessary to ensure via legislation that the welfare state is able to provide individualized services to Sámi persons with disabilities on an equal footing with others.³²⁹

In 2017 another research report on the situation of Sámi persons with disabilities living in Sweden *Förutsättningar och villkor för samer med funktionsnedsättning i de samiska förvaltningskommunerna i Sverige* (Edin-Liljegren & Flykt 2017) was released. The study was conducted by interviewing 19 civil servants working in municipalities located in the Sámi administrative region. The results of the study show that knowledge regarding Sámi persons with disabilities is very limited. Cultural understanding is lacking in most municipalities, and the knowledge of the municipality employees of the Sámi culture and language is generally poor. There is a lack of knowledge about the rights of indigenous peoples, and general guidelines and strategies to improve the situation should be developed.³³⁰

A study on the possibilities of participation and of the welfare services of Sámi persons with disabilities in Finland, *Experiences of inclusion and welfare services among Finnish Sámi with disabilities* (Hokkanen 2017) is also a part of the project financed by the Nordic Welfare Centre. Since the previously mentioned report was published only after finishing the text of this report, it has not been fully taken into account in this study. Hokkanen's (2017) research project ran concurrent to this project, so the project researchers met and discussed regularly throughout the research process, and the results of the project have been taken into a consideration as examples in this report.

³²⁹ Uttjek (2016), p. 8-9.

³³⁰ Edin-Liljegren & Flykt (2017), p. 7-8.

In addition to the above publications, there have been several further publications on the theme in Norway and Sweden. The aforementioned publications we have highlighted above are, however, particularly essential to this report, because they describe in a comprehensive manner the challenges met by Sámi persons with disabilities in the Nordic welfare systems. In the interviews of this study, many similar themes come up that are also addressed in the previously presented publications, such as the challenges faced by Sámi persons with disabilities as a result of the structures of the Finnish welfare system. The informants in this study also bring up the fact that the employees of different offices and establishments have limited knowledge on the Sámi culture and language, and instead of their disability or special needs, they also want to emphasize their abilities to manage in their everyday life and to be part of the Sámi community.

5.3.1. Previous research on Sámi persons with disabilities living in Finland

Some publications have previously appeared in Finland, which specifically deal with the situation of Sámi persons with disabilities. In 1997, the Ministry of Social Affairs and Health published *Birge ja eale dearvan. Saamelaisten sosiaali- ja terveystalvveluprojektin loppuraportti* (Välimaa & Laiti-Hedemäki, 1997), (*Final report of the Sámi Social and Health Services Project*), which discusses essential services for Sámi persons with disabilities and their current status. The report highlights, among other things, the differences in the number and variety of services provided for persons with disabilities in the Sámi homeland and outside of it. As services and employment opportunities are declining in sparsely populated areas, the opportunities for people with disabilities to become involved in the local working life were also reported to deteriorate further. The report highlights the right of Sámi persons with disabilities to maintain their own language and culture, which should be better taken into account, for example, in the design and implementation of different rehabilitation models. In addition, when purchasing various aids, their suitability for the living environment of the person should be taken into account. For example, the report mentions electrically powered vehicles that do not always operate in sub-zero temperatures, where using them is also challenging on non-asphalted roads. The unique needs of a person's living environment should be taken into account so that even persons with severe disabilities can genuinely live

Access to information, especially in the different Sámi languages, was reported lacking concerning the support services in social services and health care,³⁴⁰ and this challenge is still topical, almost 20 years after the publication of the report³⁴¹. According to Magga (1999) when Sámi language services are not available, problems will arise, among other things, because of the difficulties/challenges in expressing the different kind of structures of thought in the Sámi and the Finnish language, which can lead to mutual ambiguities. Moreover, other features of the Sámi culture are not taken into account in the implementation of services, and in the worst case, disability and consequent move into institutional care, for example, can lead to the person being forced out of their mother tongue and culture. In the 1990s, people with disabilities who spoke Skolt or Inari Sámi had no access to social and health care services in their own mother tongue.³⁴²

In a survey published in 2017, *Saamenkielisten palveluiden nykytilakartoitus. Saamelaisten lasten-, nuorten ja perheiden palvelut, (Mapping the current Sámi language services, Services for Sámi children, young people and families)* it appears that the situation concerning Sámi language social and health services is still poor. For example, apart from needs assessment by the municipality of Enontekiö social services, services for persons with disabilities are not available in Sámi. In Utsjoki, it is possible to have occupational therapy in Sámi, but otherwise all rehabilitation services are in Finnish and they are designed based on the Finnish culture. According to the survey, this means in practice that in the current situation, a child receiving rehabilitation services will have to grow into a Finnish-speaker. In addition, tests mapping the functional abilities, health or other special needs are not available in Sámi languages. This is particularly challenging, for example, in the case of auditory tests. Doing the test in a language that is not the mother tongue of the person tested can affect the results obtained. In the areas of Vuotso, Enontekiö and Inari, there are home services for people with disabilities in North Sámi, and in the Sevettijärvi area also in Skolt Sámi. In Inari Sámi language, this service does not seem to be available.³⁴³ It is also important to remember that these limited services are available only to residents of the Sámi homeland.

³⁴⁰ Ibid.

³⁴¹ Interview SámiSoster ry, Ristenrauna Magga 13.9.2017.

³⁴² Magga (1999), 21-22.

³⁴³ The Sámi Parliament, Saamelaiskäräjät et al. (2017), p. 32-36.

Medical rehabilitation is rarely available in the Sámi languages, and the situation is also poor concerning different aids and equipment. It would be essential, however, that both these services were available in the person's own mother tongue, because both rehabilitation instructions and guidance, and instructions in using aids and equipment contain complicated terminology. This, in turn may lead to the results not corresponding to the expectations. At the moment, Lapin Kuntoutus Oy is organising rehabilitation courses in Sámi in Rovaniemi, paid for by Kela. In these courses, there is interpretation into Sámi if the customer so wishes. SámiSoster also arranges group activities to support wellbeing and inclusion in Sámi language for Sámi reindeer herders, and it proposes instructions and guidance in Sámi in other sectors in its field.³⁴⁴ In addition to the services listed in the survey by the Sámi Parliament, at least Coronaria is proposing speech therapy in Sámi language in the municipalities of Enontekiö and Muonio.³⁴⁵

In the *Saamelaisten sosiaali- ja terveystalouden kehittämisohjelma 2016-2019* (2016) (Sámi Social and Health Service Development Program 2016-2019), the Sámi Parliament points out that Sámi-language disability services should be developed in such a way that they would form a consistent whole that takes into account the Sámi cultural background and is continuous in its response to existing and emerging needs. The Sámi Parliament also stresses in its program the provision of Sámi-language and culture services to Sámi people with disabilities, regardless of their place of residence, throughout the person's whole life.³⁴⁶

In addition to the above works published in Finland that relate at least to some extent to the situation of Sámi persons with disabilities, the Kela Research Department published a report in 2011 *Saamelainen Kelan asiakkaana. Saamelaisten oikeudet ja asema alkuperäiskansana Kelan toimeenpanemassa sosiaaliturvassa* (Faurie, 2011). (*A Sámi as a Kela Client. The rights of the Sámi and their status as an indigenous people in social security provided by Kela*) The report deals with a number of issues that also affect the everyday lives of Sámi

³⁴⁴ The Sámi Parliament, *Saamelaiskäräjät* (2017), p. 43.

³⁴⁵ Coronaria, *Asiantuntijat* (read on 11.11.2017). Available at: <https://www.coronaria.fi/asiantuntijat/sunnamaarit-sara-tornensis/>; Interview SámiSoster ry, Ristenrauna Magga, 20.6.2017.

³⁴⁶ The Sámi Parliament, *Saamelaiskäräjät, Saamelaisten sosiaali- ja terveystalouden kehittämisohjelmassa 2016-2019*, (2016), p. 31-32.

persons with disabilities. In their conclusions, Faurie (2011) presents some of the same things that have been discussed in the aforementioned studies. The publication emphasizes, inter alia, the need to develop Kela's Sámi-language services and the reform of the equality plan to include, for example, services in Sámi for persons with disabilities, as well as the inclusion of the principle of positive special measures in the services provided by Kela, and the need to provide knowledge about the Sámi culture and livelihoods for employees working with Sámi people. The publication highlights development needs also in terms of legislation, and emphasizes considering the views of the Sámi Parliament in the development of legislation and services. When assessing the need for further research, it is noted that Sámi-speaking elderly people and persons with disabilities are in danger of discrimination and exclusion. One suggestion for further study is the possibility of organising some forms of rehabilitation reimbursed by Kela in Sámi language.³⁴⁷

In addition to the studies and publications presented in this section, there are publications from Finland concerning the welfare of the Sámi and services from a broader perspective³⁴⁸. They will not be further discussed in this research report, as this study focuses specifically on Sámi persons with disabilities, with special emphasis on the implementation of their human rights and the multiple discrimination they face.

5.4. Persons with disabilities in Finland's human rights policy

Persons with disabilities and the realisation of their rights have been brought to the centre of Finland's human rights policy. This chapter outlines the Finnish human rights policy measures to promote the rights of persons with disabilities at both national and international levels. Finland ratified the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the

³⁴⁷ Faurie, Maija 2011, Saamelainen Kelan asiakkaana, Saamelaisten oikeudet ja asema alkuperäiskansana Kelan toimeenpanemassa sosiaaliturvassa, Sosiaali- ja terveysturvan selosteita, Kelan tutkimusosasto, Helsinki, Tampere: Juvenes Print – Tampereen yliopistopaino Oy, (75/2011), p. 48-50.

³⁴⁸ See e.g. Heikkilä et al. (2013).

Convention on the 11th of May 2016³⁴⁹, and it entered into force on the 10th of June 2016. Finland signed the convention on the 30th of July 2007, but its ratification was subject to legislative changes,³⁵⁰ which are discussed in more detail in the next chapter.

Nationally, for the implementation of the Convention, Article 33 (2) of the Convention has designated an autonomous and independent structure to promote, protect and monitor the national implementation of the Convention. In Finland, this task is handled by the national human rights institution that consists of the Human Rights Centre, its Human Rights Delegation and the Parliamentary Ombudsman. Its tasks include, for example, providing guidance, instructions, training and information about the Convention, as well as monitoring the implementation of Finland's obligations. In addition, the institution must protect persons with disabilities from violations of the rights mentioned in the Convention.³⁵¹

The participation of persons with disabilities and disability organisations in the follow-up work under Article 33(3) of the Convention has been established through a permanent disability section under the Human Rights delegation, known as the Disability Rights Committee (VIOK).³⁵² In addition, Article 33 (1)

³⁴⁹ A/RES/61/106.

³⁵⁰ Parliament of Finland, Ratification of the Convention on the Rights of Persons with Disabilities. Available at:

https://www.eduskunta.fi/FI/tietoaeduskunnasta/kirjasto/aineistot/kotimainen_oikeus/LATI/Sivut/vammaisten-oikeuksien-yleissopimuksen-ratifiointi.aspx.

³⁵¹ The Parliamentary Ombudsman, Eduskunnan oikeusasiamies, Eduskunnan oikeusasiamiehen kertomus vuodelta 2016, K 8/2017 vp. Tampere: Juvenes Print – Suomen yliopistopaino (2017), p. 66. Autismi ja aspergerliitto, YK:n vammaisten henkilöiden oikeuksia koskeva yleissopimus astuu voimaan 10.6.2016. Available at:

https://www.autismiliitto.fi/liitto/ajankohtaista/yk_n_vammaisten_henkiloiden_oikeuksia_koskeva_yleissopimus_astuu_voimaan_10.6.2016.2617.news.

³⁵² The Government Bill, HE 284/2014, p. 91; The Human Rights Centre, Ihmisoikeuskeskus, Ihmisoikeuskeskuksen toimintakertomus 2016, Tampere: Suomen Yliopistopaino Oy – Juvenes Print (2017), p. 65-66; The Human Rights Centre, Ihmisoikeuskeskus, Vammaisten ihmisoikeuskomitea aloittanut toimintansa (8.11.2016). Available at:

<http://www.ihmisoikeuskeskus.fi/?x177247=4353331>; The Parliamentary Ombudsman, Eduskunnan oikeusasiamies, Eduskunnan oikeusasiamiehen kertomus vuodelta 2015, K 11/2016 vp, Tampere: Suomen yliopistopaino- Juvenes Print Oy (2016), p. 66. UN Convention on the Rights of Persons with Disabilities, Article 33 point 3: ” *Civil society, in particular*

of the Convention requires the Contracting Parties to designate one or more liaisons for matters relating to the implementation of the Convention in accordance with their respective governmental organisations and to consider establishing or designating a coordination system within that organisation to facilitate implementation activities at various levels. In Finland, this national contact point is composed of a representative appointed by the National Council on Disability (VANE) that was set up to facilitate the implementation of the Convention and to promote cooperation, as well as represent the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs.³⁵³

In 2014, for the first time, the Parliamentary Ombudsman's Office chose the implementation of the rights of people with disabilities as a special theme, and the topic is also discussed in its own chapter in the Parliamentary Ombudsman's report of 2014³⁵⁴. In 2015, the implementation of the rights of people with disabilities was raised as a special theme for the office for the second time.³⁵⁵ Also in the 2016 report, the implementation of the rights of people with disabilities and shortcomings in their implementation are comprehensively addressed.³⁵⁶ In addition, the report states that the Ombudsman, together with the Director of the Human Rights Centre, set up a Disability Team in December, 2016. The tasks of the Disability Team are diverse and include, inter alia, the planning and preparation of the implementation of the tasks under the Convention as well as the consideration of co-operation and inclusion with the permanent disability division of the advisory board. The tasks also include monitoring the implementation of the rights of persons with disabilities and eventual support in

persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.(A/RES/61/106.)”

³⁵³ Government Bill, HE 284/2014 vp, 89; The Human Rights Centre, Ihmisoikeuskeskus (2016), 65-66. UN Convention on the Rights of Persons with Disabilities, Article 33, point 1: *”States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels. (A/RES/61/106.)”*

³⁵⁴ The Parliamentary Ombudsman, Eduskunnan oikeusasiamies, Eduskunnan oikeusasiamiehen kertomus vuodelta 2014, K3/2015 vp, Helsinki: Suomen yliopistopaino - Juvenes Print Oy (2015), p. 89-94.

³⁵⁵ The Parliamentary Ombudsman, Eduskunnan oikeusasiamies (2016), p. 113-120.

³⁵⁶ The Parliamentary Ombudsman, Eduskunnan oikeusasiamies (2017), p. 66-79 & 120-121.

the activities of the Ombudsman and the Human Rights Centre, surveying cooperation opportunities with authorities and organisations, as well as assistance in the dissemination of information.³⁵⁷

In 2016, the Human Rights Centre released a report *Vammaisten henkilöiden pääsy oikeuksiin: vammaisjärjestöjen neuvontapalvelut* (2016), (*Access to rights of people with disabilities: Disability Advisory Services*), which was drafted in 2015 based on interviews with the lawyers of the main disability organisations and with counsellors providing guidance. The survey shows that at the moment, disability organisations provide comprehensive, expert, guidance and counseling, and the organisations have an understanding based on facts of the challenges faced by the people they represent in their everyday life. The report also lists the general problems that have been noted, such as problems related to communication, shortcomings in interpretation services, or challenges in understanding. It also discusses the digitalisation of the society and services, shortcomings in mobility and mobility-related services, as well as the challenges caused by the procurement procedures and privatizing of services. In addition, there are challenges in decision-making and in the implementation of the obligation to provide advice, as well as in social inclusion, the lack of individuality in disability service provision, and the lack of opportunities to participate.³⁵⁸

In 2016, the Ministry of Justice and the Non-discrimination Ombudsman, commissioned by the discrimination monitoring system, released a report on the experiences of discrimination of persons with disabilities "*Vammaisena olen toisen luokan kansalainen*" ("*As a person with disability I am a second-class citizen*"). The conclusions note that even though the formal rights of people with disabilities in Finland are good, due to prevailing attitudes and atmospheres, the

³⁵⁷ The Parliamentary Ombudsman, Eduskunnan oikeusasiamies (2017), p. 68.

³⁵⁸ The Human Rights Centre, Ihmisoikeuskeskus. *Vammaisten henkilöiden pääsy oikeuksiin: vammaisjärjestöjen neuvontapalvelut* (2016). Available at: http://ihmisoikeuskeskus-fi-bin.directo.fi/@Bin/ba571b93dc23df1f1c3fe2eeb145d2cc/1508934260/application/pdf/3503070/Vammaisten_pa%cc%88a%cc%88sy_oikeuksiin_FINAL.pdf

implementation of rights in everyday life is still problematic³⁵⁹. 64.2% of those surveyed in the online survey reported that they had experienced discrimination during the past year and most often the grounds for discrimination were referred to as disability, health status and age.³⁶⁰ The study addressed the discrimination faced by persons with disabilities in, inter alia, the provision of services and goods, the various situations related to working life and the accessibility of electronic services.³⁶¹

The Government's Human Rights Report for 2014 addresses the safeguarding of the rights of persons with disabilities in their own chapter, which emphasizes in particular the implementation and enforcement of the UN Convention's contractual obligations and raising of awareness of the rights of persons with disabilities in all sectors and levels of society. It also emphasizes the aim of promoting accessibility in society, as well as strengthening the rights of self-determination and participation of persons with disabilities.³⁶² The rights of persons with disabilities have also been highlighted in Finland's Human Rights Reports in 1998³⁶³, 2004³⁶⁴ and 2009³⁶⁵ and in the Government's Human Rights Report in 2000³⁶⁶.

³⁵⁹ The Non-discrimination Ombudsman, Yhdenvertaisuusvaltuutettu, "Vammaisena olen toisen luokan kansalainen", Selvitys vammaisten syrjäytäkemuksista arjessa, Oikeusministeriö ja syrjinnän seuranta järjestelmä, Helsinki: Lönnberg painot Oy (2016), p. 100.

³⁶⁰ Ibid, p. 45, 52-53.

³⁶¹ Ibid.

³⁶² Ministry for Foreign Affairs of Finland, Valtioneuvoston ihmisoikeusselonteko 2014, Ulkoasiainministeriö, Jyväskylä: Grano Oy, (2014), p. 71-75. Available at: <http://formin.finland.fi/public/download.aspx?ID=136941&GUID=%7b7E6D44FB-6F31-4BFA-A521-F5CCAC509B24%7d>.

³⁶³ Ministry for Foreign Affairs of Finland, Ulkoasiainministeri Tarja Halosen eduskunnan ulkoasiainvaliokunnalle antama selonteko Suomen hallituksen ihmisoikeuspolitiikasta 11.11.1998 (1998), p.7.

³⁶⁴ Valtioneuvoston selonteko Suomen ihmisoikeuspolitiikasta, Helsinki: Edita Prima Oy, (2004), p. 116-121. Available at: [http://www.formin.fi/public/download.aspx?ID=69315&GUID={A4EDB3C3-1FF2-4C68-90D8-2B937828D80C}](http://www.formin.fi/public/download.aspx?ID=69315&GUID={A4EDB3C3-1FF2-4C68-90D8-2B937828D80C).

³⁶⁵ Valtioneuvoston selonteko Suomen ihmisoikeuspolitiikasta, (2009), p. 28-29. Available at: <http://www.formin.fi/public/download.aspx?ID=69310&GUID={0AFC392E-12BD-41C4-927C-257A392DB382}>.

³⁶⁶ Ministry for Foreign Affairs of Finland, Ihmisoikeudet ja Suomen ulkopolitiikka, Ulkoasiainministeri Erkki Tuomiojan eduskunnan ulkoasiainvaliokunnalle antama selvitys

Improving the rights of persons with disabilities is, of course, also one of the key crosscutting goals of Finland's international human rights policy and development policy, and persons with disabilities are raised in the Finnish Foreign Service Human Rights Strategy³⁶⁷, in the Foreign Service human rights Action Program 2013-2015³⁶⁸ and in the most recent Government Human Rights Report³⁶⁹. In the Foreign Service Human Rights Strategy, the elimination of discrimination is highlighted as one of the goals, and as one of the selection criteria for key projects in the future. Persons with disabilities are shown in the human rights strategy as a group that can be more easily discriminated against in society than others.³⁷⁰ In Finland's Foreign Service Human Rights Policy Action Programme 2013-2015, people with disabilities emerge in initiatives promoting the human rights of women and girls and their participation opportunities, or promoting the implementation of economic, social and cultural rights and making them legally binding as well as promoting participation. In addition, support for work promoting the rights of people with disabilities in the European Council is highlighted as a measure related to the development of international organisations.³⁷¹

In 2012, the Minister of Development at the time, Heidi Hautala initiated the so-called "Disability Rights Package" (*Vammaisoikeustyön vahvistaminen Suomen kehitysyhteistyössä*), (*Strengthening the Rights of Persons with Disabilities in Finland's Development Cooperation*), on the basis of which Finland's work on

Suomen hallituksen ihmisoikeuspolitiikasta 29.11.2000, Ulkoasiainministeriön julkaisuja, Helsinki, p. 121-123.

³⁶⁷ Ministry for Foreign Affairs of Finland, Suomen ulkoasiainhallinnon ihmisoikeusstrategia, Ulkoasiainministeriö, Jyväskylä: Kopijyvä Oy, (2013), Available at: <http://formin.finland.fi/public/download.aspx?ID=115729&GUID={DD6BF865-D308-4C5B-B7F7-959D0AD65DD0}>

³⁶⁸ Ministry for Foreign Affairs of Finland, Suomen ulkoasiainhallinnon ihmisoikeuspoliittinen toimintaohjelma 2013 – 2015, Ulkoasiainministeriö, Joensuu: Kopijyvä Oy, (2013). Available at: <http://formin.finland.fi/public/download.aspx?ID=116041&GUID={D0D4D53A-778C-4BBF-A808-D57DB8F206E4}>.

³⁶⁹ Valtioneuvoston ihmisoikeusselonteko (2014).

³⁷⁰ Ministry for Foreign Affairs of Finland, Ulkoasiainhallinnon ihmisoikeusstrategia (2013), p. 19-20.

³⁷¹ Ministry for Foreign Affairs of Finland, Ulkoasiainhallinnon ihmisoikeuspoliittinen toimintaohjelma 2013-2015 (2013), p. 14-21.

disability rights has been strengthened.³⁷² In 2013, the report *Vammaisten ihmisoikeudet Suomen ulkopolitiikassa (Human Rights of People with Disabilities in Finland's Foreign Policy)* was published, discussing the role of persons with disabilities in Finland's foreign policy and highlighting the diversity in their positions and the challenges they face. The report also lists recommendations for Finland to promote the status of people with disabilities in various aspects of foreign policy, including bilateral and multilateral development cooperation.³⁷³ The introduction of the rights of people with disabilities into the mainstream in all activities is seen as Finland's main way of promoting the rights of people with disabilities.³⁷⁴

Finland is also an active player in promoting and advocating the rights of people with disabilities in international arenas. It has previously been the largest contributor to the UN Special Rapporteur on Disability³⁷⁵, and in 2017, Finland granted EUR 200,000 to the UN Special Rapporteur on Disability to support work to raise awareness of the situation of people with disabilities living in developing countries and to help them³⁷⁶. In addition, Finland is currently one of the largest contributors to the United Nations Disability Partnership Program UNPRPD (UN Partnership on the Rights of Persons with Disabilities).³⁷⁷

³⁷² Sario, Katariina, Suomen keskeiset vammaisten oikeuksiin kehitysyhteistyössä liittyvät saavutukset vuosina 2011-2014 (18.8.2014). Available at: <http://formin.finland.fi/public/download.aspx?ID=133861&GUID={56BC1A92-EE98-425A-B4AB-39D5BFE8A567}>.

³⁷³ Tuure, Tuomas, *Vammaisten ihmisoikeudet Suomen ulkopolitiikassa* (2013). Available at: <http://formin.finland.fi/public/download.aspx?ID=118431&GUID={E972A78A-2D14-488A-8386-E1CA28240440}>; Sario (2014).

³⁷⁴ Sario (2014), <http://formin.finland.fi/public/download.aspx?ID=133861&GUID={56BC1A92-EE98-425A-B4AB-39D5BFE8A567}>

³⁷⁵ Valtioneuvoston ihmisoikeusselonteko (2014), p. 71.

³⁷⁶ Ministry for Foreign Affairs of Finland, Ulkoasiainministeriö, OHCHR; YK:n vammaisten henkilöiden oikeuksien erityisraportoijan tukeminen; 1. lisämyöntö (11.5.2017). Available at: <http://formin.finland.fi/public/default.aspx?contentid=362908&nodeid=48022&contentlan=1&culture=fi-FI>.

³⁷⁷ Ministry for Foreign Affairs of Finland, Ulkoasiainministeriö, Suomen kansainvälinen ihmisoikeuspolitiikka. Available at: <http://formin.finland.fi/Public/default.aspx?nodeid=49583&contentlan=1#vammaiset>; Sario (2014).

Although there have been many positive actions in Finland regarding the implementation of the rights of persons with disabilities, the third round of UN Universal Periodic Review (UPR) still gave Finland recommendations to improve the situation of people with disabilities. The recommendations urged stronger measures against harassment and hate speech directed at persons with disabilities,³⁷⁸ continuing to ensure the possibility of women with disabilities to participate in political and public life,³⁷⁹ and development of a disability policy program to support the implementation of the UN Convention on the Rights of Persons with Disabilities.³⁸⁰ In addition, recommendations were made concerning, inter alia, accessibility³⁸¹ and the promotion of the employment of persons with disabilities³⁸².

As has been shown above, Finland has been active in the past few years in promoting the rights of people with disabilities both domestically and internationally. However, the Sámi persons with disabilities who are at the centre of this study have been marginalised also in this debate. There is no previous research directly concerning the implementation of the rights of Sámi persons with disabilities in Finland, even though reports have been prepared also concerning Sámi persons with disabilities. As a part of a minority within a minority and as a representative of a different culture in the Finnish welfare system, Sámi persons with disabilities are in a vulnerable position and they should be better accounted for in the policy of promoting the rights of persons with disabilities.

³⁷⁸ UPR, Report of the Working Group on the Universal Periodic Review, Finland, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 25.8.2017, point 93.64, p.7. Available at: <http://formin.fi/public/download.aspx?ID=170493&GUID={B14A0CE7-D760-4EC2-A68E-369230C5AF71}>.

³⁷⁹ UPR 2017, point 93.85., p. 9.

³⁸⁰ UPR 2017, point 93.135, p. 14.

³⁸¹ UPR 2017, point 93.136, p. 14.

³⁸² UPR 2017, point 93.137, p. 14.

5.5. On the human rights of indigenous persons with disabilities

The human rights of indigenous people with disabilities have only quite recently come to the attention in the UN. As mentioned in the previous chapter, Article 22 of the UN Declaration mentions persons with disabilities as a special group, whose rights must be given special attention when the declaration is implemented.

Following the adoption of the UN Declaration, the legal status of indigenous persons with disabilities began to receive attention in the form of various expert panels and seminars.³⁸³ A particularly active actor has been the UN Permanent Forum on Indigenous Issues (UNPFII), which in 2013 completed a study on the implementation of the human rights of indigenous persons with disabilities and related challenges. According to the study, persons with disabilities among indigenous peoples often face discrimination on multiple grounds, for example concerning participation rights, access to education, language and culture, and access to justice. Indigenous women and children with disabilities are facing particular challenges.³⁸⁴ There may be challenges in children's education both in terms of access and due to the fact that education is not taking place in indigenous languages.³⁸⁵ The research report emphasizes the importance of eradicating discrimination on multiple grounds.³⁸⁶

The study emphasizes that indigenous peoples' self-determination must be the basis of all measures aimed at promoting and protecting the rights and the status of people with disabilities belonging to indigenous peoples, and that they must be able to enjoy full self-determination and participation rights. The study recommends that full participation of people with disabilities should also be ensured in the indigenous peoples' own political institutions and systems.³⁸⁷ One

³⁸³ The United Nations and Indigenous Peoples with Disabilities, <https://www.un.org/development/desa/disabilities/issues/the-united-nations-and-indigenous-persons-with-disabilitiep.html>.

³⁸⁴ UN Economic and Social Council, UN Permanent Forum on Indigenous Issues, Study on the situation of indigenous persons with disabilities with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6, 2.

³⁸⁵ *Ibid.*, p. 8-9.

³⁸⁶ *Ibid.*, p. 8.

³⁸⁷ *Ibid.*, p. 7-8.

of the key aspects of self-determination is related to healthcare, where it should be realised through the strong participation of people with disabilities belonging to indigenous peoples in the planning and implementation of healthcare measures. At the same time, it should be ensured that the measures are also culturally sensitive, which implies that healthcare staff should be familiarized with the culture and language of indigenous peoples. Right to health is a fundamental human right, and its fulfilment must take into account the cultural and linguistic characteristics as well as the right of indigenous peoples to live in a healthy environment and enjoy their traditional land rights.³⁸⁸

A study by the UNPFII highlights particularly the high risk of indigenous women and girls with disabilities of being subjected to violence, including sexual violence.³⁸⁹ According to the study report, indigenous women with disabilities face the same challenges as other indigenous women, such as inadequate inclusion by both state institutions and indigenous institutions, and inadequate access to education or health services. It is particularly challenging for indigenous persons with disabilities to access decent legal services.³⁹⁰ As with other women with disabilities, indigenous women with disabilities also may be at risk of forced sterilization and reproductive controls.³⁹¹ The study report includes a number of recommendations to the UN, to states and to indigenous peoples to improve the rights and status of people with disabilities belonging to indigenous peoples, with particular emphasis on their diverse inclusion and self-determination in matters concerning them.

In its study report, The UN Permanent Forum on Indigenous Issues invites the UN Expert Mechanism on the Rights of Indigenous Peoples, (EMRIP) to take the rights and status of people with disabilities under special focus.³⁹² Also, the United Nations Human Rights Council in its resolution asks the EMRIP to launch a study on the discrimination that indigenous peoples encounter in business life

³⁸⁸ Ibid., p. 11.

³⁸⁹ Ibid., p. 14.; See also Report of the Office of the United Nations High Commissioner for Human Rights - Thematic study on the issue of violence against women and girls and disability 30.3.2012, A/HRC/20/5.

³⁹⁰ Ibid., p. 15.

³⁹¹ Ibid.

³⁹² Ibid., p. 18.

and financial services, and discuss the challenges, opportunities and best practices, with indigenous women and indigenous persons with disabilities as particular groups.³⁹³ The draft report prepared by EMRIP in 2017 highlights the importance of traditional livelihoods but also new businesses for indigenous peoples and the need for legal protection.³⁹⁴ The draft report gives an example of the violation of the Sámi's historical and intellectual property rights in Sámi handicrafts in Finland, where Sámi culture and traditional clothing are used in tourism without the Sámi's consent or contribution.³⁹⁵ An example of inequality experienced by Sámi women is given from Norway, where the position of women in traditional reindeer husbandry used to be strong but has since deteriorated with the legal system and state policies that emphasize the status of men as reindeer herders, for example, in reports related to the Reindeer Herding Act.³⁹⁶ One of the interviewees in this study brings up the roles of women and men, particularly in the Sámi reindeer herding culture, and wonders if the present gender differences have become part of reindeer herding because of the impact of Western culture. The informant suspects that, in particular, in the former nomadic culture the gender divide would have been impossible in the form it exists today.

The unequal position of people with disabilities is emphasized in the draft report, albeit only on a very general level. The draft report recommends that states take measures, in particular, to curb the discrimination faced by indigenous people with disabilities, women and young people, and to improve their access to economic services and opportunities to carry out own business activities.³⁹⁷

³⁹³ Resolution adopted by the Human Rights Council on September 2016 on Human Rights and Indigenous Peoples, A/HRC/RES/33/13, 2. point 4.

³⁹⁴ Draft study of the Expert Mechanism on the Rights of Indigenous Peoples, Good Practices and challenges, including discrimination, in business and in access to financial services by indigenous peoples, in particular indigenous women and indigenous persons with disabilities, 10-14 July 2017, tenth session, A/HRC/EMRIP/2017/CRP.1

³⁹⁵ *Ibid.*, p. 9 See also Study by the Expert Mechanism on the Rights of Indigenous Peoples, Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, 19 August 2015, A/HRC/30/53.

³⁹⁶ *Ibid.*, p. 21-22. See Solveig, Joks "Women's position in the Sámi reindeer husbandry" In Anderson and Dana (Eds) *International Handbook of Research on Indigenous Entrepreneurship*, Cheltenham, U.K. Edward Elgar Publishing Limited, 2007, p. 246-256.

³⁹⁷ *Ibid.*, p. 23.

The status and rights of indigenous people with disabilities became one of the key themes at the UN World Conference on Indigenous Peoples in 2014. The final document of the conference mentions persons with disabilities as a separate point, including the need to develop strategies, measures and legislation and institutional structures in cooperation with and through the inclusion of people with disabilities in all the measures concerning them.³⁹⁸

The Committee monitoring the implementation of the Convention on the Rights of Persons with Disabilities has, for example in its conclusions on Guatemala in 2016 expressed its concern for the fact that certain groups, such as indigenous peoples may face multiple discrimination, and recommends that multiple, intersectional discrimination be acknowledged in legislation and policies.³⁹⁹ Likewise, in the conclusions on Canada in 2017 the Committee emphasized the importance of an intersectional approach for example in relation to indigenous peoples, who are under special risk of discrimination, and called for positive special actions. The Committee recommends introducing the criteria of multiple and intersectional discrimination into legislation and public political programs, and recommends that Canada safeguard, for example, health services for indigenous persons with disabilities.⁴⁰⁰ In its future conclusions on Finland, the Committee may pay attention to the special position of Sámi persons with disabilities and on eventual multiple discrimination, and may call for better implementation of social and health services in Sámi languages.

³⁹⁸ Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, 15.9.2014, A/69/L.1, Para 9.

³⁹⁹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Guatemala, 30 September 2016, CRPD/C/GTM/CO/1, Para 15-16.

⁴⁰⁰ Committee on the Rights of Persons with Disabilities, Concluding observations on Canada, 8 May 2017, CRPD/C/CAN/CO/1, Para 13-14. See, also, Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Colombia, 30 September 2016, CRPD/C/COL/CO/1, Para 14-15; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Chile, 13 April 2016, CRPD/C/CHL/CO/1 Para 11-12; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Brazil, 29 September 2015, CRPD/C/BRA/CO/1, Para, 12-13.

5.6. On the human rights of persons with disabilities

Sámi persons with disabilities naturally have all the rights of the Sámi, and they can enjoy all the rights that belong to persons with disabilities. The purpose of this chapter is to describe in general terms the human rights of people with disabilities. The UN Convention on the Rights of Persons with Disabilities, recently ratified by Finland, as well as related legislation and legislative reforms, are discussed in a separate chapter. Since most of the general human rights conventions also relevant to people with disabilities have already been addressed in the chapter on Sámi rights, this chapter presents, by way of example, statements of the committees monitoring the implementation of human rights conventions concerning the rights of persons with disabilities.

In the United Nations, the legal status of people with disabilities from a human rights perspective has been actively promoted since the 1970s. In 1971, the UN General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons,⁴⁰¹ the core idea of which was to guarantee to persons with intellectual disabilities equal rights with other people. The UN General Assembly promoted the legal status of people with disabilities in the Declaration on the Rights of Disabled Persons⁴⁰² in 1975. The position of people with disabilities was also strengthened by the World Programme of Action concerning Disabled Persons⁴⁰³ in 1982, which, more than the earlier Declaration, emphasizes the aim of full participation of persons with disabilities in the society, and the principle of equality.⁴⁰⁴ In the following decade, in 1993, the Standard Rules for the Equalisation of Opportunities for Persons with Disabilities⁴⁰⁵ were adopted in the

⁴⁰¹ Resolution adopted by the General Assembly, 2856 (XXVI). Declaration on the Rights of Mentally Retarded Persons, A/RES/26/2856, 20 December 1971.

⁴⁰² Declaration on the Rights of Disabled Persons, Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975.

⁴⁰³ World Programme of Action concerning Disabled Persons, General Assembly, 3. December 1982 A/RES/37/52.

⁴⁰⁴ Ibid.

⁴⁰⁵ Standard Rules for the Equalisation of Opportunities for Persons with Disabilities, adopted by the United Nations General Assembly, forty-eighth session, resolution 48/96, annex, of 20 December 1993.

United Nations. Even though the standard rules are not legally binding, they have had an impact in the realisation of the human rights of persons with disabilities.⁴⁰⁶

The function of United Nations Special Rapporteur on the rights of persons with disabilities has been significant in promoting the rights of people with disabilities. The first rapporteur was appointed in 1994. Since then, the Special Rapporteur's mandate has broadened and the rapporteur has extensive duties in promoting the legal status of people with disabilities, from receiving communications and information to country visits and annual reports.⁴⁰⁷ Although the implementation of the rights of persons with disabilities has improved over the years, the rapporteur's annual reports show that states have still not been able to provide sufficient and equal conditions for people with disabilities to fully enjoy their human rights.⁴⁰⁸ Despite efforts, people with disabilities remain largely excluded from the majority population of society because they are thought to be non-productive.⁴⁰⁹ In our interview material, an informant raises the issue and explains that they had been proposed ill health retirement at a very young age, but they had refused. Although a change for the better has already taken place, disability is often seen as a medical problem or a social policy or charity issue, and the people with a disability are seen as an object of scrutiny and not as an agent making their own decisions.⁴¹⁰ However,

⁴⁰⁶ The Government Bill, HE 284/2014 vp Hallituksen esitys eduskunnalle vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan hyväksymisestä sekä laeiksi yleissopimuksen ja sen valinnaisen pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja eduskunnan oikeusasiamiehestä annetun lain muuttamisesta, p. 9.

⁴⁰⁷ UN Special Rapporteur on the Rights of Persons with Disabilities, <http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/SRDisabilitiesIndex.aspx>.

⁴⁰⁸ Human Rights Council, Thirty-fourth Session, 27. February-24. March 2017, Report of the Special Rapporteur on the rights of persons with disabilities, 20. December 2016, A/HRC/34/58.

⁴⁰⁹ Degener, Theresia, "Disabled Persons and Human Rights: The Legal Framework", in T. Degener & Y. Koster-Dreese (eds), *Human Rights and Disabled Persons. Essays and Relevant Human Rights Instruments*, Martinus Nijhoff Publishers, Dordrecht, 1995, p. 9-39, 9. See also Degener, Theresia, *Disability and freedom: the International Covenant on Civil and Political Rights (ICCPR)*, in Quinn & Degener et al (eds), *Human Rights and Disability. The current use and future of United Nations human rights instruments in the context of disability*, United Nations, New York and Geneva, 2002, p. 37-51.

⁴¹⁰ Kumpuvuori, Jukka, Högbäck, Marika, *Vammaisten henkilöiden ihmisoikeudet Suomessa*, Åbo Akademi, ihmisoikeusinstituutti, 2003, p. 11.

considering persons with disabilities as independent agents allows for the protection of human rights and fundamental freedoms in an honourable way.⁴¹¹

The 2017 report of the UN Special Rapporteur highlights challenges in the availability of special services, emphasizing the acceptance by people with disabilities of different services and forms of special support, which should also be culturally sensitive and respectful of privacy.⁴¹² The most recent report also highlights the intersectional approach: people with disabilities form a very heterogeneous group with a wide variety of identities related to race, colour, gender, sexual orientation, religion, or ethnicity, especially mentioning indigenous peoples.⁴¹³ Regarding indigenous peoples, the report also emphasizes historical discrimination. States are called upon to take measures to eradicate discrimination and its effects.⁴¹⁴

All the general human rights conventions and the legal instruments protecting indigenous peoples discussed in chapter 4.2. naturally apply also to Sámi persons with disabilities. The bodies monitoring the implementation of the human rights conventions may have taken positions on the rights of persons with disabilities also when the human rights convention in question does not expressly mention disability. Even when disability is not explicitly mentioned as a grounds for discrimination, the prohibition of discrimination in all human rights conventions mentioned in the previous chapter applies naturally to people with disabilities. Thus, for example, both the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) protect both the Sámi and people with disabilities. The statements concerning Finland, however, have focused particularly on the rights of the Sámi.

⁴¹¹ Quinn, Gerard & Degener, Theresia, Expanding the system: the debate about a disability-specific convention, in Quinn & Degener et al (2002), p. 181-184.

⁴¹² Human Rights Council, Thirty-fourth Session, 27. February-24. March 2017, Report of the Special Rapporteur on the rights of persons with disabilities, 20. December 2016, A/HRC/34/58, p. 13.

⁴¹³ Ibid., p. 11.

⁴¹⁴ Ibid.

As Kumpuvuori and Högbacka reflect, the reason for the limited use of the ICCPR in the context of the rights of people with disabilities may be that disability related issues have been seen mainly or exclusively as social or health issues. Another reason for the underdeveloped use of the ICCPR may be that disability organisations have not actively drawn up shadow reports, and the opportunity for submitting individual complaints has not been sufficiently utilized.⁴¹⁵ However, as mentioned in the previous chapter, Article 26 of the ICCPR includes a wide-ranging and independent prohibition of discrimination, which makes this convention important for people with disabilities. Sámi persons with disabilities could be protected by Article 26, together with Articles 27 and 1 of the International Covenant on Civil and Political Rights.

For persons with disabilities, a convention that is significant in many ways is the International Covenant on Economic, Social and Cultural Rights (ICESCR) mentioned in chapter 4.2.1.⁴¹⁶, which also safeguards the rights of the Sámi as an indigenous people. In 2014, Finland also ratified the Optional Protocol of the ICESCR on the Individual Complaints Procedure.⁴¹⁷

Social rights can be seen as a subcategory of the ICESCR, but in a broader sense, the concept of social rights covers all ICESCR rights, and can therefore also include the right to education and self-development.⁴¹⁸ Both in the national legislation on fundamental rights and in international human rights conventions, social rights have temporally followed freedom rights, and for that reason ICESCR rights are called “second generation human rights”.⁴¹⁹ In Finland, one key part of the constitutional rights reform was to add the ICESCR rights in the Constitution and to modify the regulation of fundamental rights to correspond to

⁴¹⁵ Kumpuvuori, Jukka, Högbacka, Marika, 2003, p. 28.

⁴¹⁶ See Despouy, Leandro, Special Rapporteur, Report on human rights and disability (E/CN.4/Sub.2/1991/31).

⁴¹⁷ 31.1.2014

⁴¹⁸ Scheinin, Martin, *Sosiaaliset perusoikeudet ja lainsäätäjät* I. Helsinki 1995, p. 345.

⁴¹⁹ Kumpuvuori, Jukka, Högbacka, Marika, 2003, p. 21. See also Eide, Asbjorn & Rosas, Allan, “Economic, Social and Cultural Rights: A Universal Challenge”, in Eide, Asbjorn, Krause, Catarina, Rosas Allan (eds.): *Economic, Social and Cultural Rights. A Textbook*, 2nd edition, Dordrecht; Boston, M. Nijhoff Publishers, 2001, p. 3-7.

Finland's human rights obligations.⁴²⁰ The right to social security as provided in section 19 of the Constitution is of particular relevance to social rights.⁴²¹ As regards the rights of persons with disabilities, their implementation is naturally strongly linked to the services and benefits of the social and health services.

The committee monitoring the ICESCR (the CESCR) adopted a general comment on persons with disabilities in 1994.⁴²² The general comment uses the term "persons with disabilities" and not "disabled persons", because of the wish to emphasize that a disability does not preclude the person, despite the disability, from being a competent person with full legal capacities.⁴²³ As pointed out at the beginning of this study report, in Finnish, however, we are using the term "vammaisen henkilö" ("disabled person") according to the Finnish translation of the UN Convention.

In its general comment the CESCR emphasizes that, even though the Covenant does not refer explicitly to persons with disabilities, the UN Declaration of Human Rights recognises that all human beings are born free and equal in dignity and rights. The Committee underlines that even though the ICESCR does entitle persons with disabilities to the full range of rights recognised in the Covenant, States are required to respond appropriately, to the maximum extent of their available resources, to guarantee to persons with disabilities the effective enjoyment of all the rights specified in the Covenant, without discrimination.⁴²⁴ The general comment defines discrimination as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability, which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.⁴²⁵

⁴²⁰ Ibid., p. 22. See the Government Bill, HE 309/1993 vp, Hallituksen esitys eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta.

⁴²¹ Constitution 731/1999.

⁴²² UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 5: Persons with Disabilities, 9 December 1994, E/1995/22.

⁴²³ Ibid., p. 2.

⁴²⁴ Ibid.

⁴²⁵ Ibid. See also the Government Bill, HE 284/2014 vp.

From a non-discrimination point of view, equal opportunities in working life pose major challenges for people with disabilities. In its Concluding Observations for Finland in 2014, the CESCR expressed its concern about the wide-ranging discrimination in Finland of people with disabilities, especially in the context of working life.⁴²⁶ The Committee refers to the ICESCR, both to Article 2 (2) of the Covenant on the prohibition of discrimination, and to the right to work guaranteed by Article 6.⁴²⁷ The Committee recommends that the State take measures to improve the status of people with disabilities in the labour market, including quotas for persons with disabilities in both the public and private sectors. In addition, the Committee recommends including the prohibition of discrimination in the Non-Discrimination Act, especially with respect to persons with disabilities.⁴²⁸ In Finland, a new Equality Act entered into force in 2014, where the conditions for the employment and training of people with disabilities have been improved, as will be explained in more detail in chapter 5.7.2. In Finland, the employment conditions of persons with disabilities had already been improved considerably. The Government's 2001 proposal to the Parliament for legislation promoting employment for people with disabilities⁴²⁹ led to several legislative changes⁴³⁰, although the situation still has not improved sufficiently. The Government's proposal states that, in accordance with the fundamental rights provisions of the Constitution, public authorities must promote employment and strive to ensure that everyone has the right to work.⁴³¹

The Convention on the Rights of the Child⁴³² that was mentioned in the previous chapter number 4.2.1. concerning Sámi children is also important for children

⁴²⁶ Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of Finland, 17. December 2014, E/C.12/FIN/CO/6.

⁴²⁷ *Ibid.*, Para 13.

⁴²⁸ *Ibid.*, Para 14.

⁴²⁹ The Government Bill, 169/2001 vp., Hallituksen esitys Eduskunnalle vammaisten ja vajaakuntoisten henkilöiden työllistymistä edistäväksi lainsäädännöksi.

⁴³⁰ There were amendments to the Social Welfare Act, National Pension Act, Disability Allowance Act and many other acts. See in more detail the Acts that came into force based on the government bill:

<https://www.eduskunta.fi/FI/vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiat&docid=he+169/2001>.

⁴³¹ The Government Bill, HE 169/2001 vp.

⁴³² Treaty Series, SopS 59– 60/1991.

with disabilities. The convention protects Sámi children with disabilities also through provisions on the protection of culture, as was noted in the previous chapter. In practice, this ought to mean the availability of culturally sensitive and Sámi language disability services or education whenever possible. It is worth noticing, that the Convention on the Rights of the Child is the first human rights convention that recognises disability as a prohibited ground of discrimination in the text of the agreement itself.⁴³³ Under Article 23 of the Convention, the States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.⁴³⁴ The States Parties recognise the right of the disabled child to special care and assistance,⁴³⁵ which shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.⁴³⁶

The Committee monitoring the implementation of the Convention on the Rights of the Child (Committee on the Rights of the Child, CRC) has drafted a General Comment on the rights of children with disabilities in 2006.⁴³⁷ The General Comment includes a reminder that discrimination takes place in various aspects of the life of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalisation and exclusion, and even to physical or mental violence that may threaten their survival and development. Discrimination may emerge in denying them access to health and social services or education, which in turn may deny them job opportunities in the future. The General Comment points out that negative attitudes and prevailing prejudices against children with disabilities and overprotection remain strong in many communities.⁴³⁸ Girls with disabilities are often even more vulnerable than boys

⁴³³ Article 2.

⁴³⁴ Article 23.1.

⁴³⁵ Article 23.2.

⁴³⁶ Article 23.3.

⁴³⁷ Committee on the Rights of the Child, General Comment No. 9 (2006), The rights of children with disabilities, CRC/C/GC/9, 27 February 2007.

⁴³⁸ *Ibid.*, p. 3.

and also face discrimination based on gender. The General Comment requests the parties to the Convention to pay particular attention to the position of girls and to take all extra measures to ensure that they are well protected and have access to all services.⁴³⁹ The General Comment emphasizes the full inclusion of children with disabilities in the society so that their parents also receive all necessary assistance.⁴⁴⁰ The Committee urges states to undertake a comprehensive review of all legislation to ensure that all provisions of the Convention are applicable to all children, including children with disabilities, in particular the rights enshrined in Article 23 of the Convention. The Committee also recommends that states make national plans of action to improve the status and rights of children with disabilities and to prevent discrimination.⁴⁴¹

In its Concluding Observations on Finland in 2011, the Committee on the Rights of the Child expresses concern that there is not sufficient information available on the living conditions of vulnerable children, such as children with disabilities. The Committee also is concerned that there are only scarce statistics available on the abuse or neglect of children and on violence against them, as well as on services directed towards them.⁴⁴² The Committee is also concerned by the fact that children with disabilities are still discriminated against, and urges the state to put prevention of discrimination at centre stage in public plans of action.⁴⁴³

The Concluding Observations concerning Finland also include a chapter on basic health care and social security (Articles 6, 18 (3), 23, 24 and 26 and Article 27 (1-3) of the Convention on the Rights of the Child) related to the rights of children with disabilities. The Committee welcomes the amendments to the Disability Services Act that entered into force in 2009, which emphasize assistance based on the individual needs of persons with disabilities, as well as the Disability Policy 2010-2015. However, the Committee expresses its concern at the lack of adequate health care services for children with disabilities in some municipalities and that the Finnish Government has not committed itself to providing funds for

⁴³⁹ Ibid., p. 4.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid., p. 5-6.

⁴⁴² The Committee on the Rights of the Child, Lapsen oikeuksien komitea, Suomea koskevat päätelmät, Concluding observations of the Committee on Finland, 7.9.2011, CRC/C/FIN/CO/44-5. (Finnish translation by the Foreign Ministry), Para 17-18.

⁴⁴³ Ibid., Paras 24.-25.

such services. The Committee is also concerned that the mobility of children with disabilities is constrained by barriers in the physical environment and in public transport, largely isolating children with disabilities from the rest of the society. In addition, the Committee is concerned about the inadequate training of teachers for working with children with disabilities, and about the fact that families of children with disabilities are not provided with adequate, quality support, nor up-to-date help and guidance to support their children's rehabilitation.⁴⁴⁴ Among Sámi persons with disabilities, both the availability of information about rehabilitation and the rehabilitation in Sámi language have been a major problem.⁴⁴⁵

Based on Article 23 of the Convention and General Comment no. 9 (2006) the Committee recommends that Finland create a comprehensive legal and political framework to guarantee the equal right of people with disabilities to access quality health care services, public buildings and public transport, and to participate in general education. In addition, the state should ensure a sufficient number of personal assistants, interpreters, and transport services for children with disabilities, and improve the teachers' skills in teaching children with disabilities and children with special needs. The state should also support the families of children with disabilities by providing them guidance in teaching, and accelerate the ratification proceedings of the Convention on the Rights of Persons with Disabilities.⁴⁴⁶ Finland has ratified the Convention on the Rights of Persons with Disabilities after these recommendations in 2016. This Convention, which also safeguards the rights of children with disabilities, will be discussed in more detail in the next chapter. In December 2011, the UN General Assembly also adopted an Optional Protocol to the Convention on the Rights of the Child establishing a system of individual and state complaints to deal with alleged violations of the Convention and its Optional Protocols. The Protocol has entered into force in Finland in 2016.⁴⁴⁷

⁴⁴⁴ Ibid., Para 39.

⁴⁴⁵ Interview: Sámi Soster, Ristenrauna Magga 13.9.2017.

⁴⁴⁶ Ibid., Para 40.

⁴⁴⁷ 12.12.2016. Valtioneuvoston asetus lapsen oikeuksia koskevan yleissopimuksen valitusmenettelyä koskevan valinnaisen pöytäkirjan voimaansaattamisesta ja pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta annetun lain voimaantulosta, 5/2016, Suomen säädöskokoelman nro 46/2016.

As to the rights of people with disabilities, mention should also be made of the Convention on the Elimination of All Forms of Discrimination against Women, discussed previously in the chapter on Sámi rights. The Committee monitoring the Convention on the Elimination on All Forms of Discrimination against Women has adopted a general recommendation number 18 (1991) concerning the rights of women with disabilities. The Committee expresses its concern about the “double discrimination” women with disabilities are facing. The Committee recommends that State Parties provide information on disabled women and on their particular situation and on measures taken to protect them with a view to ensuring that they have equal access to education and employment, health services and social security, and an ability to participate in social and cultural life.⁴⁴⁸

Persons with disabilities are also protected by the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment that we have not discussed in the previous chapter.⁴⁴⁹ The Optional Protocol to the Convention strengthens the protection of persons who have lost their liberty against torture and other cruel, inhuman or degrading treatment or punishment. The Protocol establishes a system in which independent international and national supervisory bodies (the Parliamentary Ombudsman in Finland) regularly check the facilities where persons deprived of liberty are kept. This right of scrutiny extends, for example, to nursing homes for persons with intellectual disabilities.⁴⁵⁰ The Protocol entered into force in Finland in 2014.⁴⁵¹

⁴⁴⁸ CEDAW General Recommendation No. 18: Disabled Women, Adopted at the Tenth Session of the Committee on the Elimination of Discrimination against Women, in 1991 (Contained in Document A/46/38).

⁴⁴⁹ UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, SopS 59–60/1989.

⁴⁵⁰ See The Government Bill, HE 284/2014 vp. Hallituksen esitys eduskunnalle vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan hyväksymisestä sekä laeiksi yleissopimuksen ja sen valinnaisen pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja eduskunnan oikeusasiamiehestä annetun lain muuttamisesta, p. 10.

⁴⁵¹ UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Optional Protocol, 7.11.2014, SopS 92-93/2014.

As is mentioned in the chapter concerning the rights of the Sámi, Article 14 of Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)⁴⁵² safeguards the enjoyment of the rights and freedoms recognised in the convention without any discrimination. Disability is not explicitly mentioned among the grounds of discrimination in Article 14 of the European Convention on Human Rights, but the European Court of Human Rights (ECHR) has included it in the “other grounds of discrimination” of the Article, even though the ECHR case law has so far been limited.⁴⁵³ The significance of the European Convention on Human Rights for social rights lies particularly in Article 6 (1) which concerns the right to a fair trial and is considered applicable in cases relating to social rights and benefits protected by public law.⁴⁵⁴ The protection against discrimination in the European Convention of Human Rights thus applies to both discrimination on the basis of being Sámi and because of disability, and that is why it is mentioned again in this context.

The revised European Social Charter came into force in Finland on 1 August 2002⁴⁵⁵. According to the government bill concerning it, the renewed European Social Charter aims to bring the European Social Charter into line with the social changes that have taken place since the adoption of the Charter⁴⁵⁶. The Charter explicitly covers the protection of persons with disabilities. Article 15 states that persons with disabilities are entitled to independence, social inclusion, and participation in social life.⁴⁵⁷ In Article 15 (2) of the Social Charter, the

⁴⁵² Treaty Series, SopS 18–19/1990; as subsequently amended SopS 71 and 72/1994, SopS 85 and 86/1998, SopS 8 and 9/2005, SopS 6 and 7/2005 and SopS 50 and 51/2010.

⁴⁵³ The Government Bill, HE 284/2014 vp., p. 11. See e.g. cases: Case number 13444/04, *Glor v. Switzerland*, ECHR 30.4.2009; Case number 33394/96, *Price v. United Kingdom*, ECHR 10.7.2001; Case number 2346/02, *Pretty v. United Kingdom*, ECHR 29.4.2002.

⁴⁵⁴ Kumpuvuori, Jukka, Högbacka, Marika (2003), p. 29.

⁴⁵⁵ 486/2002.

⁴⁵⁶ The Government Bill, HE 229/2001 vp. Hallituksen esitys eduskunnalle uudistetun Euroopan sosiaalisen peruskirjan hyväksymisestä ja laiksi sopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta sekä laiksi Euroopan sosiaalisen peruskirjan ja siihen liittyvän lisäpöytäkirjan eräiden määräysten hyväksymisestä annetun lain kumoamisesta.

⁴⁵⁷ Under Article 15: With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community,, the Parties undertake, in particular: 1. to take the necessary measures to provide persons with disabilities with guidance,

Contracting Parties undertake to promote access to employment of people with disabilities by encouraging employers to recruit and retain disabled workers in a normal working environment, and to adapt working conditions to the needs of persons with disabilities. Where this is not possible due to disability, employers are encouraged to arrange for or create sheltered employment according to the level of disability. The Council of Europe has adopted a Disability Action Plan for 2006-2015. Its key principles are anti-discrimination and human rights, equal opportunities and participation. The Action Plan includes 15 measures, including participation in political, public and cultural life, information and communication, employment, physical accessibility and transport. In addition to the Disability Action Plan, the Council of Europe has issued a number of recommendations, resolutions and declarations on people with disabilities and their status.⁴⁵⁸

When discussing the human rights of persons with disabilities, we still need to mention the International Labour Organization Convention (No. 159) on Vocational Rehabilitation and Employment (Disabled Persons), which was adopted in 1983.⁴⁵⁹ Finland ratified it in 1985.⁴⁶⁰ The Member States who have ratified the agreement are required to draft an action policy on the professional rehabilitation and employment of people with disabilities in order to ensure that disabled people are entitled to appropriate vocational rehabilitation and

education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private; 2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services; 3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

⁴⁵⁸ See Vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan voimaansaattamisesta valmistelleen työryhmän mietintö, Ulkoasiainministeriö 2013, p.16.

⁴⁵⁹ Kansainvälisen työjärjestön ammatillista kuntoutusta ja työllistämistä koskeva yleissopimus no 159, Säädöskokoelma 218/1986. SopS 24/1986.

⁴⁶⁰ The Convention entered into force on 20.6.1985.

employment opportunities in the open labour market. In principle, people with disabilities should have the same opportunities as other employees. Equal opportunities and rights of disabled women and men must also be respected. Positive special measures to ensure true equal opportunities and treatment for people with disabilities should not be considered discriminatory towards other workers.⁴⁶¹

The supervisory practice of the bodies monitoring the implementation of human rights shows that equal opportunities for people with disabilities to live and work in an equal manner with others are still not adequately achieved. In the Parliamentary Ombudsman's legality oversight practice, it has been found that the opportunities for people with disabilities to participate equally with others have not always been properly realised in their contacts with different authorities and in other instances subject to legality oversight. Specific problems have been associated, inter alia, with mobility and the accessibility of services.⁴⁶² We will discuss these in more detail in the next chapter.

5.7. Convention on the Rights of Persons with Disabilities and its relationship to national law

The Convention on the Rights of Persons with Disabilities⁴⁶³ and its Optional Protocol⁴⁶⁴ were adopted in the UN General Assembly on 13 December 2006. The Convention was opened for signature in March 2007, and it entered into force internationally on 3 May 2008.

The Convention on the Rights of Persons with Disabilities is the first legally binding international document on the rights of persons with disabilities. The

⁴⁶¹ See Vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan voimaansaattamisesta valmistelleen työryhmän mietintö, Ulkoasiainministeriö (2013), p.16.

⁴⁶² Parliamentary Ombudsman, Eduskunnan oikeusasiamiehen toimintakertomus vuodelta 2015, K 11/2016, p. 113-120, p. 113.

⁴⁶³ Yleissopimus vammaisten henkilöiden oikeuksista SopS 27/2016, Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106, United Nations, *Treaty Series*, vol. 2515, p. 3.

⁴⁶⁴ *Ibid.*

purpose of the Convention is not to create new rights, but to reaffirm already existing rights guaranteed by other human rights conventions for people with disabilities.⁴⁶⁵ However, the agreement provides such a detailed and up-to-date content on the interpretation of existing human rights for people with disabilities, that it thereby creates actual new obligations for states.⁴⁶⁶ Although international human rights conventions guarantee the same rights for all people in principle, the rights of people with disabilities are not fully realised. Structural obstacles in society, attitudes, and lack of knowledge limit the opportunities for people with disabilities to independent living, self-determination, and inclusion in the society.⁴⁶⁷

The key principles of the Convention are: respect for the individual's right to self-determination, non-discrimination and equality, participation of persons with disabilities and inclusion in society, as well as accessibility. The Convention is also based on equality between men and women, respect for diversity, acceptance of people with disabilities as part of the diversity of people, and respect for the rights of disabled children.⁴⁶⁸

The agreement has quickly become one of the most widely accepted UN human rights conventions. More than 160 parties, including the European Union as a "regional integration organisation", have already signed the Convention.

⁴⁶⁵ See Vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan voimaansaattamista valmistelleen työryhmän mietintö, Ulkoasiainministeriö (2013), p. 4.

⁴⁶⁶ See generally Mégrét, Frédérik, "The Disabilities Convention, Human Rights of Persons with Disabilities or Disability Rights?", *Human Rights Quarterly*, Volume 30, number 2, May 2008:494-516.

⁴⁶⁷ See Vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan voimaansaattamista valmistelleen työryhmän mietintö, Ulkoasiainministeriö, 2013, p. 4.

⁴⁶⁸ Ibid. See an analysis on the Convention, Kanter, Arlene, P., "The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities", 34 *Syracuse J Int'l L & Com.* 287 (2006-2007); Pirjatanniemi, E., "Vammaisten henkilöiden ihmisoikeudet", in T. Koivurova ja E. Pirjatanniemi (eds.), *Ihmisoikeuksien käsikirja*, Tietosanoma, 2013, s. 270-297; Schulze, Marianne, "Understanding the UN Convention on the Rights of Persons with Disabilities", *A Handbook on the Human Rights of the Persons with Disabilities* (September 2009), Handicap International.

However, the number of signatories and ratifying parties to the Optional Protocol enabling the individual complaint procedure is clearly lower.⁴⁶⁹

Finland was among the first countries to sign the Convention on the Rights of Persons with Disabilities as well as the Optional Protocol already in March 2007. The Parliament approved the Government bill for ratification of the Disability Convention on 3 March 2015.⁴⁷⁰ As mentioned, Finland ratified the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the 11th of May 2016, and it entered into force on the 10th of June 2016.

In connection with the ratification, a statement was also adopted to ensure that the conditions of Article 14 of the Convention are met in national law before the ratification is completed. Article 14 safeguards the equal opportunities of persons with disabilities to enjoy the right to personal liberty and security. We will get back to the legislative reforms related to this in a later paragraph of this chapter. Ratification of the agreement has required legislative changes to the Municipality of Residence Act⁴⁷¹, the Social Welfare Act⁴⁷² and the Act on Special Care for People with Intellectual Disabilities.⁴⁷³ In the amendment of the Non-discrimination Act, the rights of persons with disabilities are also strengthened in the spirit of the Convention as regards the reasonable accommodations explained in the next chapter.

The reform of the disability service legislation is still ongoing. The new Act on Special Services for Social Welfare based on Disability is intended to replace the current Disability Services Act and the Act on Special Care for People with Intellectual Disabilities.⁴⁷⁴ The new Act would complement the Social Welfare

⁴⁶⁹ Suomen YK-liitto, YK:n yleissopimus vammaisten henkilöiden oikeuksista ja sopimuksen valinnainen pöytäkirja, Sälekarin kirjapaino oy, Somero 2015, p. 1-2.

⁴⁷⁰ Ibid. 2.

⁴⁷¹ Municipality of Residence Act 1994/201; Act amending the Municipality of Residence Act 1377/2010.

⁴⁷² Social Welfare Act 1378/2010.

⁴⁷³ Act amending the Act on Special Care for Persons with Intellectual Disabilities 381/2016.

⁴⁷⁴ Government bill on special services based on disability and on amending the Social Welfare Act. Draft 17.5.2017 lp. Hallituksen esitys eduskunnalle laeiksi vammaisuuden perusteella järjestettävistä erityispalveluista sekä sosiaalihuoltolain muuttamisesta. Luonnos.

Act that is currently applied as the general law on social welfare. The Health Care Act would apply to healthcare and medical rehabilitation needed by people with disabilities. In addition, people with disabilities would be entitled to other services and support under other special social and health care legislation.⁴⁷⁵

The purpose of the law is to implement the equality and inclusion of people with disabilities in society, and to prevent and eliminate barriers that restrict the person from achieving equality. In addition, the aim of the law would be to promote independent performance and self-determination, and to ensure adequate, quality services that are tailored to individual needs.⁴⁷⁶

The law would oblige the province to ensure that the services are implemented according to individual needs and the best interest of the person with disability, both in content and extent. Particular attention should be paid to the implementation of services for children and young people with disabilities. They should take into account the age and development stage of the child or young person, family relationships and other close human relationships. The services should be implemented in such a way as to support the wellbeing and development of children and young people, as well as the ability to act as an equal with other children and young people.⁴⁷⁷

The reform is intended to reflect the Constitution and international law requirements that persons with disabilities have equal access to the assistance and support they need, regardless of the type or the cause of disability. The current legislation based on diagnosis and severity of the disability does not fully ensure that the services would be organised in taking into account the individual needs of the person with a disability, as affected, *inter alia*, by the person's life situation and the living environment.⁴⁷⁸

In a statement on the reform of the law, the Sámi Parliament expresses its deep concern that the Sámi indigenous status and rights are not taken into account in the proposal, which places Sámi persons with disabilities at a disadvantage in

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.

relation to the dominant population.⁴⁷⁹ The statement includes a reminder of the Sámi's constitutional right to language and culture and the right to Sámi-language services in all sectors of society.⁴⁸⁰ In addition, the statement refers to the UNDRIP and includes a reminder that equality is an intersecting principle in the act being amended, and it must also be implemented for the Sámi persons with disabilities.⁴⁸¹ According to the statement, the practice of the current disability legislation has varied and the interpretation has too often been decided by financial resources. Vulnerable indigenous persons with disabilities have, in practice, been denied the opportunity to develop and maintain their own language and culture.⁴⁸²

According to the statement, the assessment of service needs, service planning, and the implementation of services for Sámi persons with disabilities should be based on securing the special linguistic and cultural characteristics of the client and their family, and strengthening their participation in their community as much as possible. The personnel participating in the assessment of need for services and the drafting of a service plan must have sufficient linguistic and cultural expertise. The service needs assessment and planning should preferably take place as a local service by a service provider and/or a social worker with multidisciplinary expertise and knowledge of the Sámi language and culture.⁴⁸³ The Sámi Parliament also proposes that the text would note that “the implementation of services should take into account the right of Sámi children and young people to grow into members their own culture and community without being hindered by disability”.⁴⁸⁴

The regional government reform, the health and social services reform, the Service Provider Act, and the Freedom of Choice Act have all been taken into account when preparing the new law on disability services, and the new act is to

⁴⁷⁹ Statement by the Sámi Parliament on the Government draft bill on acts for special services provided on the basis of disability, and on amending the Social Welfare Act.17.7.2017, Request for statement by the Ministry of Social Affairs and Health 17.5.2017, Dnro: 348/D.a 2/2017.

⁴⁸⁰ Ibid. p. 2.

⁴⁸¹ Ibid.

⁴⁸² Ibid., p. 4.

⁴⁸³ Ibid., p. 6.

⁴⁸⁴ Ibid., p. 8.

enter into force as the new provinces begin their operations. The change in the timetable for the health and social services reform also affects the preparation of the new Disability Services Act. The Government bill on disability services is scheduled for the spring of 2018. The new Disability Services Act would enter into force in 2020.⁴⁸⁵

The Disability Rights Committee (VIOK) has expressed concern about the status of people with disabilities in the implementation of the regional government, health, and social services reform. For example, the Provinces Act proposed in connection with the reform of the regional government does not give any legal mandate to the regional Disability Councils. VIOK hopes that the Disability Councils will be given real powers to promote opportunities for the participation of citizens with disabilities and provide equal opportunities and social conditions at the local and regional levels, as well as the mandate to draft proposals on improving the services to the regional government based on reports, assessments and follow-up. The Committee also regards the mere obligation to promote accessibility as inadequate, because any service that is not accessible effectively restricts the opportunities of a client with limited capacities to use the service.⁴⁸⁶

The Optional Protocol to the Convention on the Rights of Persons with Disabilities allows for individual complaints filed by a committee for the Rights of Persons with Disabilities established with the Convention, if a person or group of persons considers that a party to the convention has violated their rights recognised by the Convention. The Committee may also investigate information according to which a Contracting Party appears to have committed serious or systematic violations of the rights under the Convention.⁴⁸⁷ The national monitoring system required by the Convention is discussed in more detail in a previous chapter 5.4. concerning the human rights policies of Finland on persons with disabilities.

⁴⁸⁵ Ministry of social affairs and Health, <http://stm.fi/vammaislainsaadannon-uudistus>.

⁴⁸⁶ The Disability Rights Committee requests that the participation of persons with disabilities be taken into account in the regional reform and the reform of social and health care. Statement to the Human Rights Centre and the Human Rights Delegation. <http://kynnyp.fi/news/vammaisten-henkiloiden-ihmisoikeuskomitea-pyytaa-huomioimaan-vammaisten-osallistamisen-sote-ja-maakuntaudistuksessa/>.

⁴⁸⁷ The Government Bill, HE 248/2014 vp., p. 3.

5.7.1. The purpose of the Convention

According to Article 1, the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms to all persons with disabilities, and to promote respect for their inherent dignity. According to the Article, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.⁴⁸⁸

According to the Government Bill on the Implementation of the Convention, promoting the human rights of persons with disabilities means active, future-oriented actions such as training, guidance and counselling, dissemination of information, and influencing attitudes at all levels of society for both persons with disabilities and without.⁴⁸⁹ A major challenge in traditional thinking has been seeing people with disabilities as objects of medical care and research, and not as agents making their own decisions. The purpose of the Convention on the Rights of Persons with Disabilities is to reinforce a paradigm shift, whereby persons with disabilities are seen as independent agents, and therefore make it possible to safeguard the fundamental freedoms of persons with disabilities in an honourable and dignified manner.⁴⁹⁰ As Rautiainen and Lavapuro note, from the point of view of the UN Disability Convention, disability must be seen as a phenomenon, which is defined through the different structures, practices and situations of society. Therefore, from a human rights perspective, disability cannot be defined by means of a person's characteristics, such as a medical diagnosis, without relating these features to the social context in which they are transformed into attributes of disability.⁴⁹¹

⁴⁸⁸ Article 1.

⁴⁸⁹ The Government Bill, HE 248/2014 vp., p. 23.

⁴⁹⁰ See Konttinen, Juha-Pekka, Vammaisten ihmisoikeudet Suomessa, Vammaisten ihmisoikeuskeskus VIKE, Suuntaaja 3/11, 2011, <https://www.aspa.fi/fi/print/808>; See also generally Harpur, Paul, Embracing the New Disability Paradigm: The Importance of the Convention on the Rights of Persons with Disabilities, *Disability & Society*, Vol 27, 2012, issue 1: 1-14.

⁴⁹¹ Rautiainen, Pauli, Lavapuro, Juha and team, Ihmisoikeusindikaattorien käyttäminen Suomen perus- ja ihmisoikeustilanteen seurantaan, valtioneuvoston selvitys- ja tutkimustoiminta, valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 3/2016, p. 82.

The aforementioned authors continue to argue that the human rights aspect underlined in the Convention is still a developing, rather than hegemonic, starting point for the interpretation of legislation affecting the status of people with disabilities, and there is a clear need to strengthen it from the point of view of the promotion of human rights of people with disabilities.⁴⁹² Rautiainen and Lavapuro also point out that in court decisions concerning people with disabilities, it is noteworthy that the human rights perspective is very rarely discussed. According to the authors, the jurisprudence of administrative courts, in particular, can be described as very reserved from the point of view of human rights. They note that, after the ratification of the UN Convention on the Rights of Persons with Disabilities in the summer of 2016, the courts should opt for a more human-rights oriented interpretation of the law in order to fulfil Finland's obligations under the human rights agreement. It would be particularly important in this context for the Supreme Administrative Court to set the direction, though its own practice, for an interpretation more favourable to human rights in matters that the administrative courts deal with.⁴⁹³

Equal opportunities to participation and equal access to services for people with disabilities are still not fully realised in our society. Obstacles are often both attitudinal, informational and physical. Even though issues concerning people with disabilities are constantly being promoted in different sectors of society, development has been slow.⁴⁹⁴ The Convention on the Rights of Persons with Disabilities seeks to take steps in the right direction. According to a government bill, safeguarding human rights means that states must take effective action to ensure the full and equal enjoyment of human rights for all human beings. States must engage actively by adopting different approaches to promoting the rights guaranteed in the Convention on the Rights of Persons with Disabilities and the realisation of the goals of the Convention. This also implies the provision of sufficient resources to secure the achievement of the objectives of the Convention.⁴⁹⁵

⁴⁹² Ibid.

⁴⁹³ Rautiainen, Lavapuro (2016), p. 85.

⁴⁹⁴ Konttinen, Juha-Pekka (2011).

⁴⁹⁵ Ibid.

5.7.2. Equality, prohibition of discrimination and strengthening of the subject

The right to be treated in an equal manner is often regarded as a freedom right in the classification of human rights.⁴⁹⁶ The principle of non-discrimination and the principle of equal treatment are exceptionally strong in comparison to general human rights. Under Article 4 of the Convention, the Contracting Parties shall take the necessary legislative, administrative and other measures to implement the rights recognised in the Convention. The laws, regulations, customs and practices that discriminate against persons with disabilities must be modified or abolished, and the protection and promotion of human rights of persons with disabilities should be taken into account in policies and programs. The Article also obliges the Contracting Parties to refrain from participating in acts and practices contrary to the Convention, and also to ensure that the authorities and institutions behave according to the obligations of the Convention. It is essential, however, that the Parties also take steps to eliminate discrimination on the basis of disability by individuals, organisations, or private companies.⁴⁹⁷

However, the core essence of the Convention is the strengthening of the status of persons with disabilities as agents: even when eradicating discrimination and ensuring equal treatment of persons with disabilities, it is important that they are not seen as objects to be protected, but as active and competent agents. According to Article 4, paragraph 3, all decision-making processes concerning persons with disabilities have to be carried out in close consultation with, and active involvement of, persons with disabilities in the preparation, decision-making, implementation, monitoring, and evaluation of disability issues. The representation of people with disabilities must take place through organisations representing people with disabilities as well as those representing any specific group, such as children, whom the matter may concern.⁴⁹⁸ In the preparation of the Convention, organisations representing persons with disabilities played an

⁴⁹⁶ Krause, Catarina & Scheinin, Martin, “The Right Not to Be Discriminated against: The Case of Social Security”, in Orlin, P. Theodore, Rosas, Allan, Scheinin, Martin, *The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach*, Turku, Finland : Institute for Human Rights, Åbo Akademi University ; Syracuse, NY : Distributed in the USA by Syracuse University Press, 2000, p. 253-286, p. 255.

⁴⁹⁷ The Government Bill, HE 284/2014 vp., p. 26.

⁴⁹⁸ Ibid.

important and recognised role. The team preparing the draft Convention had an exceptionally wide representation, in the UN context, of disability organisations. Similarly, the Ad Hoc Committee, in which negotiations were carried out between 2002 and 2006, included representatives of disability organisations and civil society.

The expertise of people with disabilities has also been taken into account when selecting the members of the Committee on the Rights of Persons with Disabilities.⁴⁹⁹ In Finland, the working group on the Convention also included representatives of the National Disability Council, the Disability Forum and the Human Rights Centre for People with Disabilities (VIKE /Threshold Association).⁵⁰⁰ The Government has appointed a new Advisory Board for the Rights of Persons with Disabilities (VANE) for the term 26.1.2017–30.4.2019. The Advisory Board replaces the National Council on Disability.⁵⁰¹ The Advisory Board operates under the Ministry of Social Affairs and Health and consists of representatives of the ministries, and six representatives of the Disability Forum Association.⁵⁰² Inclusion of persons with disabilities and organisations representing them is only beginning, because the Convention has only been in force for a short time. In order to improve the participation of persons with disabilities and of organisations representing them, the Disability Rights Committee (VIOK)⁵⁰³ has been established as a permanent division of the Human Rights Delegation. According to Kalle Könkkölä, the Committee Chair, the Committee would need additional resources, such as a permanent secretary, in order to have real opportunities to promote key issues for people with

⁴⁹⁹ Mahlamäki, Pirkko, *Vammaisfoorumi ry, johdanto*, Suomen YK-liitto, YK:n yleissopimus vammaisten henkilöiden oikeuksista ja sopimuksen valinnainen pöytäkirja, Sälekarin kirjapaino Oy, Somero (2015), p. 8.

⁵⁰⁰ *Vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan voimaansaattamista valmistelleen työryhmän mietintö*, Ulkoasiainministeriö (2013).

⁵⁰¹ http://stm.fi/artikkeli/-/asset_publisher/valtioneuvosto-asetti-vammaisten-henkiloiden-oikeuksien-neuvottelukunnan.

⁵⁰² Merja Heikkonen, general secretary, Advisory Board on the Rights of persons with disabilities, presentation in a workshop on the rights of persons with disabilities at the Human Rights Centre 18.9.2017.

⁵⁰³ Human Rights Centre, <http://www.ihmisoikeuskeskus.fi/?x177247=4353331>.

disabilities. The Chair considers it a structural problem, that the VIOK can only make statements to the national human rights institution that it is a part of.⁵⁰⁴

Following a proposal by VIOK, the Human Rights Centre has proposed measures to increase the participation of persons with disabilities that would require clarifying the content of the obligation of inclusion and mapping international practices on the implementation of Article 4 (3) of the Convention on the Rights of Persons with Disabilities. According to the Human Rights Centre, it is important to define an operating model for the minimum level of inclusion of people with disabilities as well as a model for full inclusion.⁵⁰⁵ This proposition by the Human Rights Centre can be considered a very important opening. Just as the rights of indigenous peoples have evolved from consultation and participation in working groups towards a genuine opportunity to influence decision-making, so does the right to self-determination of people with disabilities require a genuine dialogue between organisations representing persons with disabilities and authorities, in order to guarantee participation from planning to implementation.

At the time of this report, there have been many news stories about the new law on public procurement, the so called “Procurement Act”⁵⁰⁶, which entered into force on 1 January 2017. The legislation is based on EU public procurement directives. The Housing Advisory Board for persons with Intellectual and Developmental Disabilities and the Disability Forum inter alia, have tried to lobby for the exclusion of services needed for the life-long assistance and support of persons with disabilities from the scope of the new Procurement Act.⁵⁰⁷ The comments of the aforementioned organisations point out that, based on

⁵⁰⁴ Interview, Kalle Könkkölä, 18.9.2017.

⁵⁰⁵ Viite: Vammaisten ihmisoikeuskomitean (VIOK) esitys Ihmisoikeuskeskukselle ja ihmisoikeusvaltuuskunnalle 20.4.2017, Ihmisoikeuskeskuksen vastaus, IOK 31/2017, 23.5.2017., p. 3.

⁵⁰⁶ Act on Public Procurement and Concession Contracts 1397/2016.

⁵⁰⁷ Opinion of the Disability Forum and the Housing Advisory Board for persons with Intellectual and Developmental Disabilities: national exclusions to the Procurement Act are possible for Finland, 6.6.2016., https://www.autismiliitto.fi/liitto/kannanotot_ja_lausunnot/vammaisfoorumin_ja_kvankin_kannanotto_suomella_mahdollisuus_tehda_kansallisia_rajauksia_hankintalakiin.2637.news?3048_o=20.

experience, the tendering procedure which entered into force on 1 January 2017, does not allow the participation of persons with disabilities in decision-making that affects them⁵⁰⁸. This can be seen as problematic in view of the Convention on the Rights of Persons with Disabilities, in particular Article 4 (3). In the procurement phase, persons with disabilities or their family members may not have been asked any questions, yet the application of the Procurement Act has made it possible for actors to change, and this may have caused problems and uncertainties.⁵⁰⁹ A Citizens' Initiative has been submitted to ask for ending the procurement concerning the necessary assistance and support for persons with disabilities. The Citizen's Initiative proposes that Section 9 of the Procurement Act be amended by adding paragraph 16 as follows: "This Act shall not apply to the provision of services for disabled persons in relation to the needs of indispensable care and support for people with disabilities and related services in housing and in everyday life."⁵¹⁰ The Citizens' Initiative reminds us that in many EU countries disability services are excluded from procurement.⁵¹¹

In Article 5 of the Convention, the States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.⁵¹² The States Parties shall prohibit all discrimination based on disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.⁵¹³ In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.⁵¹⁴ Specific measures, which are necessary to achieve de facto equality of persons with disabilities, are not considered discrimination.⁵¹⁵ In practice, the Article has a significant impact on the implementation of the other individual objectives and obligations of the Convention.⁵¹⁶

⁵⁰⁸ Ibid.

⁵⁰⁹ <http://www.kaleva.fi/uutiset/kotimaa/hankintalaki-vei-vammaisilta-paatantavallan-omasta-elamastaan-horjutettu-luottamusta-arkeen-ja-koko-yhteiskuntaan/772663/>.

⁵¹⁰ Citizen's Initiative on stopping competitive procurement on indispensable help and support for persons with disabilities, <https://www.kansalaisaloite.fi/fi/aloite/2538>.

⁵¹¹ Ibid.

⁵¹² Art. 5.1.

⁵¹³ Art. 5.2.

⁵¹⁴ Art. 5.3.

⁵¹⁵ Art. 5.4.

⁵¹⁶ The Government Bill, HE 284/2014 vp., p. 27.

The extensive prohibition of discrimination includes prohibitions of direct and indirect discrimination. The criteria of direct discrimination are met if a national law, or instructions given by an authority or an official practice, places a person with a disability in an unequal position due to their disability. Even a private entity, such as a trader or other organisation, violates the prohibition of discrimination if they deny service to a person with a disability or refuses a person with a disability entry to an open event without a proper justification. If conduct is seemingly equal as such, but its result is discriminatory, it is considered to be indirect discrimination. For example, a student with a physical disability is prevented from studying, if the facilities of a school are inaccessible and the person cannot move around in a wheelchair. Even if the educational institution were of a high standard as to the education provided, if reasonable accommodations are not provided, i.e. individual arrangements for the student with a disability, it results in indirect discrimination.⁵¹⁷ Special needs other than those related to mobility also need to be considered when designing education for people with disabilities. One informant describes in an interview how they eventually had to develop suitable learning methods and aids themselves, as they had not been previously necessary nor available in the school in question. This example also demonstrates the importance of involving persons with disabilities in, for example, the development processes of aids or methods of assistance. A person who does not encounter certain challenges may not be even able to imagine what kind of special needs people with different challenges may have.

In Finland, the principle of equality refers both to the prohibition of discrimination and to the equality of people before the law. Article 5 of the Convention also relates to equality. The concept of equality usually refers to gender equality alone.⁵¹⁸ As was noted in the previous chapter on the rights of the Sámi, the provision on equality in Section 6 of the Constitution includes equality before the law, as well as the prohibition, without an acceptable reason, to treat anyone differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns their person.

⁵¹⁷ Gustafsson, Henrik, YK:n vammaissopimus käyttöön! –käsikirja, Invalidiliitto, p. 8. https://www.autismiliitto.fi/files/2018/yk_toolkit_pieni.pdf.

⁵¹⁸ The Government Bill, HE 284/2014 vp., p. 27.

The prohibition of discrimination is contained in Section 6, subsection 2 of the Constitution. Prohibition of discrimination means that no one should be placed in a different position with respect to others without an acceptable justification. Positive special treatment, for example, on the grounds of disability, was discussed in chapter 4.1. concerning the rights of the Sámi. In this context, however, it is important to mention that, according to the government bill on the fundamental rights reform, the list was drafted to take into account in particular the grounds of discrimination that can be considered as the core of the prohibition of discrimination in Finland.⁵¹⁹ Like Kumpuvuori and Högbacka point out, even though the list is not exhaustive, and even though disability could have been covered under "other reasons concerning the person", without any explicit mention, the fact that disability is explicitly mentioned in the list represents a major step forward in the development of the rights of persons with disabilities in Finland.⁵²⁰ Nevertheless, disability is the ground under which the second highest number of complaints have been filed to the Non-Discrimination Ombudsman, when the complaints are broken down by grounds of discrimination.⁵²¹

As stated in the 2016 report by the Non-Discrimination Ombudsman and the Ministry of Justice concerning experiences of disability discrimination in everyday life, there is still a long way to go before equal participation and equal status for persons with disabilities is reached in the Finnish society.⁵²² The report reveals that in the provision of goods and services, in working life and in electronic services, measures targeted at people with disabilities to improve their equality and participation are not seen as necessary, but it is considered sufficient that the support network provided by the welfare state cares for them. The report emphasizes that people with disabilities need to be considered as individuals, and their needs need to be taken into account, in order to give better opportunities for participation in the Finnish society.⁵²³

⁵¹⁹ The Government Bill, HE 309/1993 vp.

⁵²⁰ Kumpuvuori, Jukka, Högbacka, Marika, *Vammaisten henkilöiden ihmisoikeudet Suomessa, Sosiaali- ja terveysministeriö*, 2003, p. 16.

⁵²¹ *Vammaisena olen toisen luokan kansalainen, selvitys vammaisten syrjintäkokemuksista arjessa, Yhdenvertaisuusvaltutettu, oikeusministeriö ja syrjinnän seurantajärjestelmä*, 2016, p. 7.

⁵²² *Ibid.*

⁵²³ *Ibid.*, Summary p. 3.

With the ratification of the Convention on the Rights of Persons with Disabilities, amendments were also made to the Non-discrimination Act⁵²⁴, which for its part contributes to the protection of equality and non-discrimination in the Constitution. Refusal of the reasonable accommodation of persons with disabilities was introduced as grounds for discrimination under section 8.

As has been noted in a previous chapter on discrimination, Section 15 of the Non-discrimination Act accounts separately for reasonable accommodation to realise the equality of persons with disabilities. According to the Article, an authority, education provider, employer or provider of goods and services has to make due and appropriate adjustments necessary in each situation for a person with disabilities to be able, equally with others, to 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 to advance their career. Under subsection 2 of the Article, when assessing the reasonableness of the adjustments, attention shall be paid, in addition to the needs of the person with disabilities, to the size, financial position, nature and extent of the operations of an actor, referred to in subsection 1, as well as the estimated costs of the adjustments and the support available for the adjustments. Under subsection 3, the employer shall on request promptly provide a written report on the grounds of its procedures to a person with disabilities, who considers that they have been discriminated against as a result of the denial of reasonable adjustments in applying for employment or public service employment or in an employment relationship or in an employment relationship under public law.

In the previous Non-discrimination Act, the obligation of providing accommodation was limited to an employer or education provider, so in the new Act the obligation is broader.⁵²⁵ According to the Government bill, the accommodations shall be as needed in any particular situation. The adjustments are context-specific, and they have to respond to the needs of the person with a disability in each concrete situation. A measure can be "needed", for example, when a service is not available to a person with disability in a manner comparable to other persons without accommodation. In such a situation, accommodation

⁵²⁴ Non-discrimination Act 1325/2014.

⁵²⁵ See Equality Act Repealed 2004/21, 5 §.

may include, for example, setting a ramp for a staircase or assisting a person with a visual impairment in a specific situation. The need for accommodation usually occurs in practice so that the person with a disability or their assistant asks for adjustment, if they deem it necessary.⁵²⁶ For example, in a restaurant, a reasonable adjustment for a person with a visual impairment may be to provide a menu in braille or to explain the content of the menu to the customer orally.⁵²⁷

The purpose of the accommodation is to give persons with disabilities an equal opportunity to deal with the authorities, to have access to education, work, as well as goods and services that are generally available, and to cope with work assignments and to advance in their career in the same way as other people. The aim is therefore to promote equal opportunities for people with disabilities, and to support their independent and full participation.⁵²⁸ According to the government bill, access to education should be understood broadly in this context.⁵²⁹ Reasonable accommodation may therefore be necessary for gaining access to education and for coping with it, as well as for progress in studies. However, the proposed provision does not imply any right for a student to be accepted in a particular school or any school they choose.⁵³⁰

Article 24 of the Convention specifically provides for the right to education. People with disabilities should receive support to allow them equal opportunities to study. The Parties should pay attention to legislation and other measures to ensure, among other things, that schools and materials are accessible. In addition to physical accessibility, the learning environment should also be accessible regarding language and communication.⁵³¹ Sámi persons with a disability may find it difficult to find personal assistants who can speak Sámi and understand the Sámi culture.⁵³²

In the working life, accommodations may concern for example the working conditions and the organisation of the work, working methods, assistive devices

⁵²⁶ The Government Bill, HE 19/2014 vp, p. 79.

⁵²⁷ Ibid.

⁵²⁸ Ibid.

⁵²⁹ The Government Bill, HE 19/2014 vp, p. 80.

⁵³⁰ Ibid.

⁵³¹ The Government Bill, HE 248/2014 vp, p. 64.

⁵³² Interview SámiSoster, Ristenrauna Magga 13.9.2017.

and organising training and work guidance in such a way that takes into account the individual needs of the person with a disability. In recruitment, the reasonable accommodation that a person with a disability may need shall not affect the employment decision. If the best-qualified applicant is a person with a disability, not selecting that applicant because of the obligation to provide reasonable accommodation is discrimination as defined in the proposed Act. Equal access to goods and services that are generally available means that persons with disabilities must have a de facto possibility to get goods or services with equal conditions as other people. Accommodation can be carried out case by case, or in different ways, depending on the circumstances.⁵³³ The rights of persons with disabilities to work and employment are provided separately also in Article 27 of the Convention. Sámi persons with disabilities living in the Sámi homeland may find it particularly difficult to find work because jobs are not available in the same way as in cities.

Non-discrimination and equality also have a connection to Article 6 of the Convention, which recognises the multiple discrimination faced by women and girls with disabilities. Discrimination against a woman or a girl with a disability may be discrimination on multiple grounds, because women and girls with disabilities are vulnerable to discrimination both based on disability and on gender.⁵³⁴ The position of Sámi women with disabilities could be considered in this context, as the fact of being a Sámi and thereby belonging to an ethnic minority may create an additional element of multiple discrimination. However, this issue did not directly emerge in the interviews of this study. As highlighted in the government bill, women and girls have been specifically brought up because the position of women with disabilities and the difficulties they face can be even more complex and more difficult than the difficulties faced by men, both in the public and private sphere. Women's specific challenges are related to housing, health, family life, violence against women, education, vocational training and work.⁵³⁵ Women with disabilities face widespread employment and

⁵³³ Ibid.

⁵³⁴ The Government Bill, HE 284/2014 vp., p. 28.

⁵³⁵ Ibid. See generally, Ortoleva, Stephanie, Lewis, Hope, *Forgotten sisters – A report on violence against women with disabilities: an overview of its nature, scope, causes and*

wage discrimination, and they have more modest opportunities to access education and vocational training than men with disabilities do.⁵³⁶ Finnish legislation prohibits discrimination on grounds of sex in the Equality Act⁵³⁷, whose purpose is to promote equality between women and men and, to this end, to improve the status of women, especially in working life.⁵³⁸ In the preamble to the convention, indigenous peoples are also listed as one of the groups whose members may face multiple or aggravated forms of discrimination.⁵³⁹

In addition to women's rights, the Convention on the Rights of Persons with Disabilities also specifically provides for the rights of the child. Article 7 stipulates that the Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. The Article also stipulates that in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

According to Section 6 of the Constitution, children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development. The rights of children and young people to be heard and to participate, among other things, are provided for separately in other legislation that naturally also applies to children with disabilities.⁵⁴⁰

consequences, Northeastern University School of Law, Northeastern Public Law and Theory Faculty Research Paper Series no 104-2012., 2012.

⁵³⁶ Ibid. See generally, Randolph, Diane Smith, The meaning of workplace discrimination for women with disabilities, *Work*, Vol. 24, number 4 (2005): 369-380; Nixon, Jennifer, Domestic violence and women with disabilities: locating the issue on the periphery of the social movements, *Disability & Society*, Vol 24, 2001, issue 1: 77-89.

⁵³⁷ Act on Equality between women and men 1986/609.

⁵³⁸ Article 1.

⁵³⁹ Part P of the Preamble.

⁵⁴⁰ Child Welfare Act (417/2007) chapter 4 contains provisions on ascertaining the child's views and hearing the child and on exercising the child's right to be heard as well as on safeguarding the interests of the child. Youth Act (72/2006) 8 § contains provisions on participation and hearing of young people. The Act on Custody of a Child and Access (361/1983) 11 § contains provisions on learning the wishes and opinions of a child. Section 10 of the act stipulates that matters concerning custody and access should above all be decided in the best interest of the child.

The Office of the Ombudsman for Children has mapped the rights of children with disabilities and children with special needs during 2009-2011, and has followed the development of the disability policy.⁵⁴¹ The Report on Children with Disabilities emphasizes the need to strengthen the participation of children, and to provide opportunities for children with disabilities to provide feedback on the quality of services. The right to file complaints about the actions of public authorities must also be safeguarded for children with disabilities, and information on their legal protection must be provided for them in an understandable form. The ways of strengthening customer and patient involvement must be planned so that the point of view of children and young people with disabilities are also taken into consideration and their experiences are used when developing services.⁵⁴² The report also criticizes the fragmentation of legislation concerning children with disabilities and emphasizes the importance of combining the Law on Intellectual Disabilities and the Disability Services Act.⁵⁴³ As mentioned above, the services for Sámi children with disabilities should take into account both the mother tongue and the specificities of the culture.

5.7.3. Accessibility

The cross-cutting theme of the Convention on the Rights of Persons with Disabilities is accessibility as provided for in Article 9 of the Convention. Paragraph 1 ensures, in accordance with the accessibility principles, the equal right of persons with disabilities to live independently in all areas of life. According to the Government bill, both different development measures and changes in application practices are needed in all the aspects of accessibility noted in Article 1 for the implementation of the provisions of the Convention.⁵⁴⁴ Obstacles to accessibility come in many different forms. Physical obstacles especially include, inter alia, barriers in the built environment. It is important to

⁵⁴¹ Lapsiasiavaltuutetun toimiston julkaisuja 2011:10, Erityistä tukea tarvitseva lapsi on ensisijaisesti lapsi, Lapsen oikeudet osaksi vammaispolitiikkaa, p. 3.

⁵⁴² Ibid.

⁵⁴³ Ibid.

⁵⁴⁴ The Government Bill, HE 248/2014 vp, p. 31.

identify physical barriers in order to ensure accessibility, and appropriate measures must be taken, among others, in buildings, schools, housing and workplaces.⁵⁴⁵

In Finnish law, Section 5 of the Land Use and Building Act⁵⁴⁶ stipulates that the objective of land use planning is a safe, healthy, pleasant, socially functional living and working environment which provides for the needs of various population groups, such as children, the elderly and the handicapped. According to Article 117 of the Act, a building must, as far as its use requires, also be suitable for people whose capacity to move or function is limited. On January 1, 2013 a new paragraph, 117e (958/2012) has been added. According to it anyone undertaking a construction project must ensure that the building and its yard and living areas are designed and constructed as required by their intended use, number of users and floor volume so that accessibility and usability are taken into account especially for children, the elderly and people with disabilities.

Article 9 (2) of the Convention on the Rights of Persons with Disabilities contains provisions to develop minimum standards and guidelines for the accessibility of premises and services open to the public and requirements of monitoring the implementation of the measures. According to the government bill, in Finland this mainly means a review of the contents of building regulations and developing them in a comprehensive and unambiguous direction.⁵⁴⁷

Accessibility also relates closely to the protection of access to transport, which is provided for in Article 20 of the Convention, and guarantees the right to personal mobility. Public transport services include municipal and long-distance bus connections, taxi and air, rail and sea and inland waterway transport. In addition to means of transport, it is important to ensure the accessibility of stations. The provisions concerning taxi transport, including vehicles, are set out in national law.⁵⁴⁸

⁵⁴⁵ Ibid.

⁵⁴⁶ Land Use and Building Act 132/1999.

⁵⁴⁷ Ibid., p. 34.

⁵⁴⁸ Taxi transportation is regulated by the Taxi Transport Act (217/2007) and the Act on Qualifications of a Taxi Driver (695/2009) and the government decree on prices of taxi transport (460/2013), where assisting a customer with a disability has special status in order to

Kynnys ry. - The Threshold Association -, an organisation promoting the basic and human rights of persons with disabilities, has submitted a request to the Non-discrimination Ombudsman to consider the practices of VR (State Railway Company).⁵⁴⁹ There are several problem points in the VR practices where accessibility and thus equality is not implemented for all persons with a disability. The request notes as problematic for example the fact that local trains no longer have conductors, and it is difficult to get on a train because the necessary ramps are in locked storage. There are also problems with lack of space in service cars, and with accessibility in restaurant cars, sleeping cars, and with ticket vending machines. Cooperation between persons with disabilities and VR is, in the request submitted by Threshold Association to the Non-discrimination Ombudsman, described as insufficient and fictitious.⁵⁵⁰

In addition to Article 20, Article 18 of the Convention also guarantees the right of persons with disabilities to liberty of movement and to a nationality, and to the freedom to choose their residence. Article 12 concerns the right of persons with disabilities to be recognised as persons before the law and to enjoy equal legal capacity on an equal basis with others in all aspects of life with no exceptions or restrictions. The Article reflects the fundamental idea of the Convention to see the person with a disability as an agent, not as an object.⁵⁵¹ The Article is closely connected with Article 19, which for its part safeguards living independently and being included in the community. To the Sámi, a sense of community is felt to be of particular importance. In the case of transport services for example, limiting

secure good levels of service. Regulation on bus and railway traffic is mainly based on EU decrees that are directly applied, and regulation of sea and air traffic mainly on international agreements and EU legislation. See in more detail The Government Bill, HE 248/2014 vp., p. 33-34.

⁵⁴⁹ Press release: Request to the Non-discrimination Ombudsman to consider the practices of VR. 15.8.2017.

Kynnys ry. <http://kynnys.fi/news/tiedote-pyynto-yhdenvertaisuusvaltuutetulle-vrn-kaytanten-huomioimiseksi/>.

⁵⁵⁰ Ibid.

⁵⁵¹ The Government Bill, HE 248/2014 vp., p. 41. See generally Craigie, Jillian, "A Fine Balance: Reconsidering the Patient Autonomy in Light of the UN Convention on the Rights of Persons with Disabilities", *Bioethics*, Vol 29, issue 6, July 2015: 398-405; Devi, Nandini, "Supported Decision-Making and Personal Autonomy for Persons with Intellectual Disabilities: Article 12 of the UN Convention on the Rights of Persons with Disabilities", *The Journal of Law, Medicine and Ethics*, Vol 41, Issue 4, 2013: 792-806.

them to daytime may deny persons who need transportation services access to hobbies other activities significant to the community available in the evenings.⁵⁵²

For the Sámi, a key right is also the right to cultural and community activities, which is secured expressly in Article 30 of the Convention. This Article recognises the right of persons with disabilities to participate in cultural life, to develop and utilize their creative, artistic and intellectual potential and understanding, and to support their specific cultural and linguistic identity and the right to participate in recreational, leisure and sporting activities on an equal basis with others.

In addition to services intended for all the citizens and good social planning, support for self-reliance includes special services, support measures, and adjustments. They are needed when public services and accessibility are not sufficient to meet the needs of a person with a disability. The key is to ensure solutions for living, moving, communicating and accessing information that meet individual needs and life situations. Services related to housing should take into account the different needs related to the disability.⁵⁵³

Article 19 (1) of the Constitution guarantees the right to receive indispensable subsistence and care. This is a subjective constitutional right for the individual to minimum security in all life situations.⁵⁵⁴ Indispensable subsistence and care means a level of income and services that safeguard the conditions of a decent life. Article 19 (3) of the Constitution obliges the public authorities to provide adequate social and health services for everyone and to promote the health of the population. When assessing the adequacy of services, the starting point is the level of service that creates the conditions for every person to act as a full member of society.⁵⁵⁵ Regulations that implement these rights are included, inter alia, in the special legislation on the services of persons with disabilities, the most important of which is the Disability Services Act and the Decree that complements it.⁵⁵⁶

⁵⁵² Interview: Sámi Soster, Ristenrauna Magga 13.9.2017.

⁵⁵³ The Government Bill, HE 248/2014 vp., p. 55.

⁵⁵⁴ The Constitutional law Committee of the Parliament, PeVM 25/1994 vp.

⁵⁵⁵ The Government Bill, HE 248/2014 vp., p. 55.

⁵⁵⁶ Decree on services and support measures provided on the basis of disability 759/1987.

In Finland, freedom of movement is enshrined in Section 9 of the Constitution. According to Section 9, subsection 1 of the Constitution, a Finnish citizen and a foreigner legally residing in the country have the freedom to move and choose their place of residence. The Municipality of Residence Act⁵⁵⁷ and the Social Welfare Act⁵⁵⁸ were amended in the beginning of 2011. Those living in residential care and in housing or family care can choose their municipality of residence more freely. A person who is living or is undergoing treatment outside their municipality of residence, may opt for the municipality in which they actually reside as the municipality of residence. In order to use the right to choose, the care or housing must be assumed to last for at least a year or it must have lasted for over a year. In accordance with the amendments of the Social Welfare Act, a person may request the assessment of their needs of service and the provision of services even outside the municipality of residence. A person can therefore move to another municipality and use its services. However, the costs will remain the responsibility of the former municipality.⁵⁵⁹ Although the amendments improve the rights of people with disabilities, there are still challenges. A person in need of housing services must apply for them in their potential new municipality of residence and wait for the municipality to answer if it can offer housing services at all. The interest of a person with a disability should always be a primary reason for the move, but in many cases, moving from one municipality to another will fail because of lack of services.⁵⁶⁰

In 2011, the Ministry of Transport and Communications published an Operational Program *Kohti esteetöntä tietoyhteiskuntaa vuosille 2011-2015 (Towards an accessible information society for years 2011-2015)*⁵⁶¹, which also takes into account the accessibility aspects and legislation concerning persons with disability. The Operational Program emphasizes the need to develop technology and equipment and provide new services, but not all manufacturers

⁵⁵⁷ Municipality of Residence Act 1994/201; Act amending the Municipality of Residence Act 1377/2010.

⁵⁵⁸ Social Welfare Act 1378/2010.

⁵⁵⁹ <http://verneri.net/yleis/kotikuntalaki>.

⁵⁶⁰ Kirkkomäki, Pia, Kotikuntalain uudistukset, Kehitysvammaisten tukiliitto ry., <http://www.kvtl.fi/fi/ammattisivut/asuminen/kotikuntalain-uudistukset/>

⁵⁶¹ Liikenne ja viestintäministeriö, toimenpideohjelman ”Kohti esteetöntä tietoyhteiskuntaa vuosille 2011-2015,” Ohjelmia ja strategioita 1/2011.

or producers can adequately take into account the different needs of different people. Technology is often developed from the point of view of young people, and the needs of older people or people with disabilities are not recognised.⁵⁶²

The operational program points out that, for example, many websites have content that people with speech-impairment or people reading in plain language are not able to use, even with assistive devices. In particular, the websites for public administration and key service providers should use clear language and short sentences, and, where appropriate, related illustrations that support the understanding of the text. People with speech-impairment should also be taken into account, *inter alia*, when designing online forms; instead of written answers, the forms should favour checkboxes or alternative answers for the user to select the most appropriate one. Alongside electronic services, alternative ways of interacting should be maintained, including personal contact with government services.⁵⁶³

In addition to the accessibility clause, the freedom of expression and opinion (Article 21) and participation in political life (Article 29) in the Convention are not realised if the materials on the Internet are not accessible to a person with sensory disabilities, or readable and comprehensible for persons with cognitive impairments.⁵⁶⁴ Access to information is considered one of the main problems for Sámi persons with disabilities, in addition to the lack of services in the Sámi languages.⁵⁶⁵

In 2011, a follow-up group for accessible communication services was set up to monitor the communication policy measures of the Operational Program. The group consists of key actors and promoters of accessibility and communication services, such as organisations for persons with disabilities.⁵⁶⁶

⁵⁶² *Ibid.*, 24.

⁵⁶³ *Ibid.*, 29.

⁵⁶⁴ Gustafsson, Henrik, *YK:n vammaissopimus käyttöön! –käsikirja*, Invalidiliitto, p. 12.
https://www.autismiliitto.fi/files/2018/yk_toolkit_pieni.pdf.

⁵⁶⁵ Interview: SámiSoster, Ristenrauna Magga 13.9.2017.

⁵⁶⁶ The Government Bill, HE 248/2014 vp., p. 34.

Interpreting, communication aids, interaction in one's own language and access to information are essential elements of equality and inclusion for persons with disabilities. Persons with visual impairments, hearing impairments and speech impairments must be guaranteed equal access to information, services and social interaction. The skills and tools needed to acquire and produce information must be accessible to every person with a disability regardless of age and place of residence.⁵⁶⁷ The lack of availability of native language information creates linguistic barriers to communication and access to information. When services in one's own language are limited, the interpreter service corrects this gap and is therefore important.⁵⁶⁸ According to section 17 subsection 3 of the Constitution, the rights of persons using sign language and of persons in need of interpretation or translation owing to disability shall be guaranteed aid by an Act. The possibility to interact with other people is an essential prerequisite for participation and for the implementation of many other fundamental rights.⁵⁶⁹ Sign Language does not exist in any of the Sámi languages. Thus, the right to a mother tongue cannot be realised for Sámi persons with a hearing or speech impairment if they can only communicate in Sign Language. In hearing tests for hearing impaired Sámi, using a Sámi language as a mother tongue may cause false diagnoses in the hearing assessment, as assessments are conducted in Finnish. The person may not understand, or has to translate the utterances into Sámi first, which sometimes has led to failure to react quickly enough and the testers have thought that the person being tested does not hear, as they are not pressing the requested key.⁵⁷⁰ The Finnish sign language may cause a situation where it is not possible to explain all essential facts about reindeer herding, for example, as all the vocabulary does not exist in Finnish.⁵⁷¹

The purpose of the Interpreting Services Act⁵⁷² is to improve the opportunities of persons with disabilities to act as equal members of the society.⁵⁷³ The Act also ensures that service providers must take into account the wishes, opinions,

⁵⁶⁷ Ibid., p. 35.

⁵⁶⁸ Ibid.

⁵⁶⁹ Ibid.

⁵⁷⁰ Interview: SámiSoster, Ristenrauna Magga 13.9.2017.

⁵⁷¹ Ibid.

⁵⁷² Act on Interpreting Services for Persons with Disabilities 133/2010.

⁵⁷³ The Government Bill, HE 248/2014 vp, p. 34.

interest and individual needs as well as the mother tongue and cultural background of the service user.⁵⁷⁴ The language office of the Sámi Parliament does not provide access to interpreters or develop interpreting services, and this has made the availability of interpreters in practice very difficult, if not impossible.⁵⁷⁵

5.7.4. Right to life, freedom, security and health

The right to life is one of the most fundamental human rights, and it is safeguarded in the Convention on the Rights of Persons with Disabilities. Under Article 10, the parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others. The right to life is also protected by the Constitution of Finland. Under section 7, everyone has the right to life, personal liberty, integrity and security. The Act on the Status and Rights of Patients contains provisions on the key principles relating to the care and treatment of patients. The Act emphasizes the active participation of the patient, the patient's self-determination and their right to care and information. According to Finnish law, disability cannot justify differential treatment in health care.⁵⁷⁶

Brain diagnostics and foetal screening studies raise the debate about foetal rights. Ultrasound images taken from the foetus are designed to map disability at an early stage.⁵⁷⁷ The Act on Termination of Pregnancy⁵⁷⁸ mentions disabilities of both the foetus and the mother as grounds for termination of pregnancy and allows for abortion at a later stage. The Disability Policy Program has identified as one necessary measure the need to find out the compatibility of the abortion criteria with the articles of the Convention.⁵⁷⁹ Article 23 of the UN Convention ensures the right of a person with a disability to parenthood on an equal basis with others.

⁵⁷⁴ Act on Interpreting Services for Persons with Disabilities, Article 10.

⁵⁷⁵ Interview: SámiSoster, Ristenrauna Magga 13.9.2017.

⁵⁷⁶ The Government Bill, HE 284/2014 vp. p. 37-38.

⁵⁷⁷ Gustafsson, Henrik, YK:n vammaissopimus käyttöön! –käsikirja, Invalidiliitto, https://www.autismiliitto.fi/files/2018/yk_toolkit_pieni.pdf, p. 17.

⁵⁷⁸ 239/1970

⁵⁷⁹ The Government Bill, HE 284/2014 vp, p. 38.

Similarly, the right to health guaranteed by the Convention is one of the key human rights of persons with disabilities, regulated by Article 25. This Article safeguards the right of people with disabilities to the highest attainable standard of health without discrimination and ensures access to healthcare services for people with disabilities. According to the Article, rehabilitation is also considered to be included in healthcare services, and they are provided for separately in Article 26 of the Convention.

Under Article 25, the States Parties shall for this purpose provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes. In addition, the parties shall provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons.⁵⁸⁰ In Finland, the provision of healthcare services, including rehabilitation, is a statutory obligation for public authorities, the responsibility for which mainly lies with municipalities and joint municipal authorities. The rights of patients to necessary health and medical care and their possibilities to access it are determined by several different acts, most essentially in the Act on the Status and Rights of Patients. Section 3 of the Patient Act also encompasses the prohibition of discrimination. Based on the Act on the Status and Rights of Patients, any person residing permanently in Finland has the right, without discrimination, to the health and medical care required by their state of health within the limits of the resources available to healthcare services at any given time. Naturally, the general prohibition of discrimination in the Constitution also prohibits discrimination on the grounds of disability in healthcare services. Section 6 of the Health Care Act lists the languages of health care as Finnish, Swedish and Sámi. Interpretation is provided for sign language users based on the Interpreting Service Act. Section 3 of the Act on the Status and Rights of Patients requires the patient's mother tongue and cultural background to be taken into account whenever possible. The Disability Policy Program states that poor accessibility of healthcare facilities and their environment as well as lack of services, such as

⁵⁸⁰ Ibid., p. 68.

interpreting services, or their poor timing may constitute barriers to the smooth and safe use of services.⁵⁸¹ This is one of the main shortcomings in the implementation of the rights of Sámi persons with disabilities.

According to Article 26, the Parties shall organise, strengthen and extend comprehensive rehabilitation services and programmes, particularly in the areas of health, employment, education and social services. Paragraph 1 of the Article further requires that the aforementioned programmes begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths; and that they support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities, as close as possible to their own communities, including in rural areas.⁵⁸² In the case of Sámi persons with disabilities, Sámi-language rehabilitation services have been extremely poorly available.⁵⁸³ Rehabilitation is regulated e.g. under the Health Care Act⁵⁸⁴ and in the Act on rehabilitation benefits.⁵⁸⁵

Article 14 of the Convention safeguards the equal right of persons with disabilities to enjoy the right to liberty and security of person. The Parties shall ensure that persons with disabilities are not deprived of their liberty unlawfully or arbitrarily, that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.⁵⁸⁶ In paragraph 2 of the Article the Parties commit to ensuring that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law, and shall be treated in compliance with the objectives and principles

⁵⁸¹ Suomen vammaispoliittinen ohjelma, VAMPO 2010–2015, Vahva pohja osallisuudelle ja yhdenvertaisuudelle, sosiaali- ja terveystieteiden ministeriö, 2010, p. 57.

⁵⁸² The Government Bill, HE 248/2014 vp., p. 70.

⁵⁸³ Interview: Sámi Soster, Ristenrauna Magga 13.9.2017.

⁵⁸⁴ Health Care Act 1326/2010.

⁵⁸⁵ Act on National Insurance Institution rehabilitation benefits and rehabilitation allowances. 566/2005; Act amending the Act on National Insurance Institution rehabilitation benefits and rehabilitation allowances 1236/2014; 145/2015; 1344/2016.

⁵⁸⁶ See generally Slobokin, Christopher, “Eliminating Mental Disability as a Legal Criterion in Deprivation of Liberty Cases: The Impact of the Convention on the Rights of Persons with Disabilities on the Insanity Defence, Civil Commitment and Competency Law”, 40 *Law & Psychol. Review* 297 (2016): 297-317.

of the Convention, including by provision of reasonable accommodation. Article 17 of the Convention safeguards the right of persons with disabilities to physical and mental integrity.

Section 7, subsection 1 of the Constitution guarantees everyone the right to personal liberty and security. Section 7, subsection 3 protects the persons from arbitrary deprivation of liberty. An individual shall not be deprived of liberty without a reason prescribed by an Act. A penalty involving deprivation of liberty must be imposed by a court of law. The lawfulness of other cases of deprivation of liberty may be submitted for review by a court of law. According to the Constitution, the rights of individuals deprived of their liberty shall be guaranteed by an Act. The right to self-determination can be considered to belong to our system of fundamental rights, included in the right to personal liberty and integrity that is safeguarded as a general basic right. According to the preparatory works of the Fundamental Rights Reform, personal liberty is a general fundamental right that protects not only the physical liberty of the individual, but also their free will and self-determination.⁵⁸⁷

On August 28, 2014 the Parliament was presented with the Government bill drafted during 2011—2015 for the strengthening of the self-determination of patients and clients of social welfare services and on the conditions of use of restrictive measures and on some related laws.⁵⁸⁸ The purpose of the Government bill was e.g. to bring the legislation on the self-determination of patients and social welfare clients into line with the requirements of the Convention on the Rights of Persons with Disabilities, so that the Convention could have been ratified during the government term. There was not enough time to complete the processing of the legislative proposal during the parliamentary term, so the proposition lapsed. When the Parliament adopted the Convention on the Rights of Persons with Disabilities and the Optional Protocol on March 3, 2015, the Parliament required that before completing the ratification of the Convention, it

⁵⁸⁷ The Government Bill, HE 309/1993 vp. Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta.

⁵⁸⁸ The Government Bill, HE 108/2014 vp. Hallituksen esitys eduskunnalle laiksi sosiaalihuollon asiakkaan ja potilaan itsemääräämisoikeuden vahvistamisesta ja rajoitustoimenpiteiden käytön edellytyksistä sekä eräiksi siihen liittyviksi laeiksi.

must be ensured that the conditions for ratification as listed in Article 14 of the Convention are met in national legislation.⁵⁸⁹

As for the use of restrictive measures, the previous Act on Special Care for Persons with Intellectual Disabilities⁵⁹⁰ drafted in the 1970's included a general provision on the use of restrictive measures. However, restrictive measures had been used in special care without the support of specific provisions of the law, in particular in situations where the aim was to ensure the right of the person in special care to essential care, and less severe means were not available or they were not sufficient.⁵⁹¹ The Act Amending the Act on Special Care for Persons with Intellectual Disabilities, which entered into force in 2016, has been amended for Section 32 on involuntary special care and with the addition of provisions on strengthening self-determination and provisions on the conditions for use of restrictive measures.⁵⁹²

In other respects, the legislation on intellectual disabilities is intended to be revised together with the previously mentioned specific legislation on social assistance for persons with disabilities. In addition, the preparation of a comprehensive reform on the strengthening of the right to self-determination of the client of social welfare services and the conditions for the use of restrictive measures is planned to continue in a separate project.⁵⁹³

5.8. Multiple discrimination faced by Sámi persons with disabilities

This chapter discusses the multiple discrimination faced by Sámi persons with disabilities. The chapter mainly concentrates on the different themes and situations that have emerged in the interviews conducted during the project, and that indicate direct, indirect, or structural discrimination. In addition, the interviews discuss situations where a person has been denied reasonable

⁵⁸⁹ The Government Bill, HE 96/2015 vp. Hallituksen esitys eduskunnalle laiksi kehitysvammaisten erityishuollosta annetun lain muuttamisesta.

⁵⁹⁰ Act on Special Care for Persons with Intellectual Disabilities 519/1977.

⁵⁹¹ The Government Bill, HE/96/2015 vp.

⁵⁹² Ibid.

⁵⁹³ Ibid.

accommodation. Multiple discrimination can be perceived in all its different forms of discrimination.⁵⁹⁴ By far the most common incidents of discrimination are those caused by disability, and in some cases, there is no differentiation as to whether the discrimination occurs by the majority population or by the Sámi community. Often, however, discrimination comes from the structures of Finnish society and is indirect in nature. This chapter discusses the issue by first categorising the experiences of discrimination according to the grounds of discrimination, after which we deepen our analysis by examining what kind of discrimination a Sámi person with a disability may encounter from in-groups and outgroups. In the interview materials, there are also indications of intersectional discrimination, and they are discussed in their own subsection. However, it is important to note that Sáminess and disability intersect in specific ways in all the experiences of discrimination, because the persons' cultural backgrounds are reflected in their way of seeing and interpreting things.

5.8.1. Discrimination based on disability

When discussing discrimination based on their disability, the informants do not always specifically explain whether the persons who discriminate against them represent the majority population or persons belonging to the Sámi community. They just discuss discrimination in everyday situations. The informants' accounts strongly emphasize that in their experience people have often underestimated them and considered them somehow "more stupid" than persons who are not categorised as persons with disabilities. The informants said that in some situations they feel that they have been labelled because of their disability. Two informants also pointed out different situations in which they tried to conceal their own disabilities because they were ashamed or because they feared that it could have an effect on their employment opportunities, for example. In some situations, other people and the surrounding community have also wanted to conceal the person's disability, which, according to one informant, has negative impacts on both the person themselves, and the increased understanding of the community regarding the disability. Another informant notes that the discrimination they have faced in their everyday life is not necessarily blatant

⁵⁹⁴ For different definitions of discrimination, see chapter 3.1. of this report.

discrimination that could be easily identified, but it occurs when others do not consider the special needs of the person and leave them out.

In their experiences, one informant highlights on several occasions how, after receiving a medical diagnosis of their disability, the community had compartmentalized them and this was reflected in the attitude of people towards them during their time in comprehensive school. Their special needs were taken into account in school teaching for example, but the personality and personal needs of the individual were not. All the necessary reasonable adjustments were not always possible, and as a result, one informant did not receive training in all the school subjects because of their disability. They feel that for this reason they did not learn all the skills they would need in life. In the case of this informant, the school attempted to cover and even hide the informant's disability from other students. According to the researchers of this study, the years the informants spent in comprehensive school left painful scars, as after their diagnosis, the community started to define them by their disability.⁵⁹⁵ One informant said that they had also encountered incidents in upper secondary school where they felt discriminated against; inter alia, because they had been refused reasonable accommodation.⁵⁹⁶

However, in the interviews of this study, discrimination in schools because of disability does not particularly emerge as a separate theme, even though their time at school has especially made an impact on persons who have been living with their disability since childhood. Yet, for example in Hokkanen's (2017) study, discrimination at school because of being different emerges strongly in interviews. The informants interviewed in Hokkanen's study also report their experiences with teachers that have not always been able to respond to their particular needs. Some of Hokkanen's survey informants also had experience of special needs schools or other special arrangements that clearly divided the views of the informants. However, Hokkanen points out that most special needs schools

⁵⁹⁵ See also Hokkanen (2017), p. 52-54.

⁵⁹⁶ Also the 2016 report by the Parliamentary Ombudsman points out the problems of implementing the right of persons with disabilities to equal education and the lack of support services when looking at the shortcomings in the implementation of the rights of persons with disabilities. (Oikeusasiamies (2017), p. 120-121).

are still far away from the Sámi homeland. In this case, the child is forced to live away from their family and culture, and is unable to study or use their mother tongue in everyday life if it is one of the three Sámi languages.⁵⁹⁷

5.8.2. Discrimination based on disability in the Finnish society

In the interviews of this study, the discrimination that can be defined as an outgroup discrimination is mostly mentioned as indirect and is often occurring within the structures of society. A recent report by the Non-discrimination Ombudsman describes attitudes towards persons with disabilities in Finland as generally bad or very bad⁵⁹⁸. In the interviews, a strong theme emerged on the need to simplify the ways various authorities work, and to take different disabilities and special needs better into account. One informant says that when they were younger, they felt that they were often just bounced back and forth from one authority to another. When interviewed, they point out that a person with disabilities is also an individual like anyone else in the society, but their experience is that this had often been forgotten in the dealings with different authorities. They feel that, especially as a child, they had not been sufficiently involved in planning their own care until at some point they had understood that they had the right to ask and know what is being done to them and why they need to go through certain processes. It is indeed important to take into account the right and need of children with special needs and / or living with a disability to know why they need certain support measures and how those can impact them. In addition, when planning care, the child's opinion should be taken into consideration according to their age and level of development.⁵⁹⁹

One informant discusses having dealt with one authority and having clearly stated their need for special assistance. Despite having been aware of this need, the authority nevertheless advised the informant to proceed using the very path that was unavailable due to their disability. In the situation described above, the

⁵⁹⁷ Hokkanen (2017), p. 52-54.

⁵⁹⁸ The Non-discrimination Ombudsman, Yhdenvertaisuusvaltuutettu (2016), p. 45.

⁵⁹⁹ Act on the Status and Rights of Patients 17.8.1992/785, 7 § on the status of a minor patient. See e.g. A/RES/44/25, The Convention on the Rights of the Child, 2 § and 12 §; A/RES/61/106, Preamble, paragraph r), 7 §. See also pages 124-125 of this report.

authority refused a reasonable adjustment that would have allowed the person to continue their dealings with the authority equally. Another informant remarked that they had dealt with one authority and explained that they needed help and assistance in order to be able to deal with this authority and other authorities because of their disability. However, the authority did not provide any support; but as a result, the person was granted disability allowance and was told to seek a personal assistant. The informant felt that this was a discriminatory practice. In such situations, it would be extremely important to advise people and tell them in what manner, and how to proceed. In our interviews with experts, the need to increase available information for persons with disabilities on existing services and opportunities was also brought up. At present, a person with a disability does not necessarily even know all the services they are entitled to, let alone how to start seeking them.⁶⁰⁰ On the other hand, the bad experiences previously described have, in some cases, also led to the person wanting to avoid dealings with authorities and coping without help.

Sometimes the informants also have a critical view of Western medicine, as they see it as placing people in a certain category of disability, which in turn is reflected in all aspects of life. Hokkanen (2017) writes that the informants in their research also felt that it was difficult to use the concept of disabled when describing themselves, and they preferred to say, for example, that they had one particular need or one particular disability. By talking about the disability one has, instead of talking about being a person with a disability, it is easier to distinguish the disability as separate from the identity of the person.⁶⁰¹ Based on the above examples, the category of a person with disability that is strongly embedded in different structures of society can thus be seen to place people with disabilities in an unequal position in society in some situations.

Hokkanen's research also raises discrimination faced by persons with disabilities in working life as an important, separate, issue. Hokkanen points out that persons with disabilities face discrimination in working life both in Finland and elsewhere, that is, the problem is international in nature.⁶⁰² The interviews in

⁶⁰⁰ Interview 13.9.2017 SámiSoster ry, Ristenrauna Magga.

⁶⁰¹ Hokkanen (2017), p. 58.

⁶⁰² Hokkanen (2017), p. 54. See also The Parliamentary Ombudsman, Oikeusasiamies (2017), 121.

this study also point out the challenges of both job search and working life to make reasonable adjustments. Interviews with the informants also indicate how important it is for the informants to participate in working life. In addition to income, it brings vital content to life and helps strengthen the status of persons as active members of the community⁶⁰³.

5.8.3. Discrimination related to disability within the Sámi community

The interview material reveals some examples of in-group discrimination faced by Sámi persons with disabilities. One informant states that the position of persons with disabilities in the Sámi community is largely related to their person. If a person is brave and they have accepted their own disability, they are treated better by the Sámi community. Another informant of our project also emphasizes that accepting themselves and their own disability is very important, and is also directly reflected in the behaviour of the surrounding community towards a person. One informant also notes that persons with disabilities are quite silent in the Sámi community and estimates that this is due to the fact that they are so few.

One informant says that they feel less worthy among the Sámi majority population because of their disability and gender, and believe the situation is primarily due to the ignorance of people concerning their disability. Often, a person who does not have experience of a particular disability may not know how to act and react to a person with that disability. Other factors influencing the status of informants include the kind of disability they have, and how closely and actively they are involved in the community and its activities. In addition, the knowledge of the Sámi language emerges as a positive factor. The informants' accounts clearly show that many factors influence their position in the Sámi community and it is important to remember that the informants in this study speak only of those representatives of the Sámi community who live close to them, and the examples presented cannot be generalized throughout the Sámi community.

⁶⁰³ Hokkanen (2017), p. 54-57; Kivistö, Mari, Kolme ja yksi kuvaa osallisuuteen. Monimenetelmällinen tutkimus vaikeavammaisten ihmisten osallisuudesta toimintana, kokemuksena ja kielenkäyttönä, Acta Universitatis Lapponiensis 283. Lapin yliopisto, Rovaniemi: Lapin yliopistopaino, dissertation (2014), p. 88-97.

One informant tells us that they feel that the thinking of the younger generation reflects the way the Finnish culture compartmentalises someone as a person with a disability. Instead, the informant feels that the older Sámi are not categorising them. They believe that the *Siida* system that used to be more clearly visible in the Sámi community before, contributed to recognizing every individual and their contribution as valuable to the community. Rather than categorising a person on the basis of their disability, all individuals were trying to find a way to help them in the community. In our expert interviews, we also found that within Sámi communities, a person with a disability has been involved within the limits of their disability. In the interview, it emerged that in some situations, the family may also have wanted to help and do certain things for the person. In doing so however, people may, without noticing it, contribute to making the person feel like an outsider of the community.⁶⁰⁴

However, some of the informants emphasize the importance of the Sámi community and, above all, of the close people in their support network. The same observation emerges from the research material collected by Hokkanen (2017). Hokkanen shows that on one hand, the community can provide support for the individual, but it is not always ready to deal with all kinds of disabilities in all situations. A strong communality is also reflected in the fact that even distant relatives can play an important role in the informants' lives, which can have a positive impact on their sense of security. In some situations, however, the opinions of even distant relatives may have great significance for the informants, and if they have experienced that the relatives have betrayed their trust, this can also be seen as a factor that reduces a sense of security in their lives.⁶⁰⁵

5.8.4. Discrimination related to being Sámi

Out-group discrimination directly related only to the person being Sámi does not arise in the interview material as often as, for instance, disability-related experiences of discrimination. Most of the experiences of such discrimination are related to the person's right to use the Sámi language when dealing with

⁶⁰⁴ Interview 20.6.2017 SámiSoster ry, Ristenrauna Magga.

⁶⁰⁵ Hokkanen (2017), p. 59-60.

authorities⁶⁰⁶, which is often not implemented. Interpreters are not always available, especially in Inari Sámi and Skolt Sámi languages. An expert interview in our project shows that there is no separate interpreting service in Finland where the authorities could order Sámi-language interpretation services. The Sámi Parliament has a list of Sámi interpreters, but they cannot be contacted through an interpreting service.⁶⁰⁷

Concerning healthcare and social services, an informant notes that they do not as such feel discriminated against by not receiving service in their mother tongue (their native language is one of the three Sámi languages). However, according to the informant, people are used to dealing with these kinds of things in the Finnish language. In this example, the person does not consider having to use Finnish as a big problem. Their second comment, however, is an example of the fact that for some people the unavailability of their linguistic rights has become a norm that is not even questioned. The situation is, of course, still more challenging if a person's native language is Skolt Sámi or Inari Sámi, where there are still less services available than in the North Sámi language.⁶⁰⁸

One informant says that today's polarised debate, for example about internal discrimination in the Sámi community, has had a negative impact on how the Sámi are treated by the majority. One informant also says that they have encountered harassment related to their Sámi identity while in upper secondary education. The harassment had occurred, inter alia, as name-calling.

In Hokkanen's (2017) research report one big theme that emerges when discussing discrimination related to the Sámi identity of persons are the often traumatic experiences of the elderly and middle-aged informants who went to residential school in their childhood and adolescence. In some cases, the children were forced to go to school far away from their families, who they usually only saw on holidays. The language generally spoken in schools and dormitories was Finnish, which children did not usually know when they started school. This caused children to experience culture shock, and they had no choice but to adapt to the situation. As another important theme, Hokkanen highlights the

⁶⁰⁶ Sámi Language Act 1086/2003, 4 §.

⁶⁰⁷ Interview 20.6.2017 SámiSoster ry, Ristenrauna Magga.

⁶⁰⁸ See also Hokkanen (2017), p. 50-52.

discrimination based on the person's Sámi identity in working life, which is, however, only rarely raised in their interviews with informants. They describe an example where a person had never been called in their own work community by their real name, but instead was called 'Laplanner'. In addition, the research report shows that the use of Finnish in working life is already self-evident in all other professions except for those that are somehow related to Sáminess.⁶⁰⁹

As a form of in-group discrimination, this study also includes structural discrimination within disability organisations, which, of course, can certainly result from a lack of resources. The activities of associations of persons with disabilities are often carried out in Finnish, Swedish and/or sign language. A Sámi person with a disability does not necessarily receive service or materials in their own mother tongue, as one informant pointed out in their interview. In Skolt Sámi or Inari Sámi, there are even less services available than in North Sámi.

5.8.5. Experiences of intersectional discrimination in the lives of Sámi persons with disabilities

Belonging to two different minority groups often causes situations where a person will encounter intersectional discrimination as a representative of both minority groups at the same time. These situations also emerge in the interviews of this study, and it is not necessarily easy to detect them, even for persons who belong to the groups, let alone to people outside them. Intersectional discrimination is often caused by the structures of the society, and it is often indirect. In our expert interview, it emerged strongly that a Sámi person with a disability will face challenges in their everyday life that a Finnish person with a disability or a Sámi person who is not categorised as a person with a disability will not face. The challenges are often linked with the Sámi language and cultural particularities and/or possibilities for the person to get, for example, the tests they need in a Sámi language.⁶¹⁰

In the interviews, there was an example of a child whose mother tongue is Sámi and whose speech development was suspected to be delayed. When an

⁶⁰⁹ Hokkanen (2017), p. 44-49.

⁶¹⁰ Interview 20.6.2017 SámiSoster ry, Ristenrauna Magga.

investigation into the situation began, there was no Sámi-speaking speech therapist available, so the test was to be carried out with the help of an interpreter. However, in such a situation, the interpreter has a big responsibility, and in the interview it was also questioned, whether it is possible to make a valid diagnosis of language development through an interpreter.⁶¹¹ Nowadays, the situation has improved so far that the services of a North Sámi speech therapist are available in the municipalities of Enontekiö and Muonio⁶¹². However, in the Inari Sámi and Skolt Sámi languages, the service is still not available. An interview also describes a situation where a person had had problems with language development as a child. Instead of attempting to find aids, or creative ways to teach their mother tongue, that is, the Sámi language, the school had come to the conclusion that the child would not be taught to write in their native language at all.

Challenges related to the use of an interpreter also emerged in other interviews. One informant said that the challenge of using an interpreter is precisely that the interpreter should be specialized in a particular vocabulary and be able to describe the feelings caused by a particular disability or special need. The informant says that in some situations, this is really challenging. On the other hand, in situations where for any reason a person does not use an interpreter, they may not be able to express all the necessary things in Finnish. Another interview also raises the challenge that people are reluctant to talk about personal and often sensitive topics through an interpreter because there is an unfamiliar person and an outsider present. The same fact also arises in other studies on Sámi persons with disabilities⁶¹³.

The importance of using the Sámi language is also emphasized in hearing tests, discussed earlier in chapter 5.7.3. of this report. In some cases where Sámi mother tongue speakers take the hearing test in Finnish, the results obtained do not necessarily give a true picture of the situation. For example, people have said they will sometimes stop to wonder what the spoken word means in Finnish, so they do not have time to respond to what they hear. In addition, there is a special

⁶¹¹ Interview 20.6.2017 SámiSoster ry, Ristenrauna Magga.

⁶¹² Coronaria, Asiantuntijat (2017). Available at: <https://www.coronaria.fi/asiantuntijat/sunnamaarit-sara-tornensis/>.

⁶¹³ See e.g. Hokkanen (2017), p. 81; Melbøe et al. (2016a), p. 13.

challenge concerning Sámi people with impaired hearing or a speech disorder: the lack of terminology characteristic of the Sámi language and the lack of signs related to traditional Sámi livelihoods. In interviews, it is apparent that there are no Sámi signs at present, and if a Sámi native speaker, for example, loses their hearing only at a later age, they may not be able to find signs to describe things or events specific to their Sámi culture.⁶¹⁴

When designing and developing aids and equipment, and when deciding on various allowances, the particularities of traditional Sámi livelihoods should be considered. Earlier in this report,⁶¹⁵ we give an example of a person who had applied for a start-up grant as vocational rehabilitation. In their application, they applied for support for a snowmobile and an ATV, but the National Insurance Institution had refused the application. According to the decision, a snowmobile and an ATV could not be considered equipment that would be necessary at work because of an illness.⁶¹⁶ The case has also been noticed by a report commissioned by Kela where the stance is critical and the report points out that in the future when making similar decision, the importance of reindeer herding as a part of the Sámi culture must be better considered.⁶¹⁷ However, this is one concrete example in which a person with a disability cannot get the necessary tools to help them in reindeer herding, which is something very important in the Sámi culture. Our expert interview reveals that it is extremely important for people with disabilities to participate, for example, in reindeer herding events, as they are also major social events in the community. Participation in traditional livelihoods is, as far as possible, an important factor in preventing the exclusion of people from the community and in maintaining the well-being of people.⁶¹⁸

In one interview, it is also pointed out that the recent actions by the state of Finland, such as the ratification of the Tenjoki Fishing Agreement, which the informant sees as violating the rights of the Sámi, put the Sámi internal minorities in a particularly vulnerable position. These people are often faced with challenges in their lives, and according to the informant, they do not necessarily have the

⁶¹⁴ Interview 20.6.2017 SámiSoster ry, Ristenrauna Magga.

⁶¹⁵ See the chapter 4.1. of this report.

⁶¹⁶ Kela statement concerning the appeal presented above, 18.1.2011.

⁶¹⁷ Faurie (2011), p. 34-35. See the case in more detail in chapter 4.1. of this book.

⁶¹⁸ Interview 13.8.2017 SámiSoster ry, Ristenrauna Magga.

same opportunities to try to defend their rights as persons representing also indigenous people's as the Sámi who are not categorised as persons with disabilities.

One informant discusses discrimination faced during their time in the army, which in this study is seen as harassment. Because of their disability, the person was not able to perform all the duties equally with others, and was therefore ridiculed.⁶¹⁹ The fact that the person is a Sámi brought a totally new nuance to the situation, because the harassment was also linked to the person's Sámi background, and not only to their disability. When a person in such a situation becomes subject to humiliating and degrading commentary, their ethnic background, together with the disability, causes a particularly discriminatory experience. In the Sámi culture and mindset, coping is essentially related to well-being⁶²⁰, and in the cited example, when the jokes questioned the person's ability to cope and they were slandered for their Sámi background, the harassment caused the person a long-term mental burden.

Hokkanen's (2017) report on intersectional discrimination discusses the emergence of the effects of historical and intergenerational traumas in the lives of Sámi persons with disabilities. Some of the informants in the study reveal difficult memories of their childhood, which still affect their lives today. Historical trauma is reflected in the lives of persons, inter alia, as challenges related to parenting, and trauma can also be reflected in lives of the next generation as the difficulty to take care of their children. Due to problems at home, some of the informants in Hokkanen's study have, at one time, been placed in foster families who have not had any dealings with the Sámi culture, which in turn contributes to the alienation of persons from the Sámi culture.⁶²¹

In the public debate in recent years, a lot has also been said about Sámi intergenerational trauma and the inherited burden, as well as the ways of unloading this burden. At the time of the writing of this report, there are plans to establish a truth and reconciliation commission in Finland, which, in the view of

⁶¹⁹ The informant did not define by whom.

⁶²⁰ See on this at a more general level Heikkilä et al. (2013), p. 54-58.

⁶²¹ Hokkanen (2017), 60-65.

the Sámi Parliament, would constitute one important aspect of dealing with the discrimination experienced through history.⁶²² In discussing Sámi persons with disabilities, however, it is important to note that their burden is, in the worst case, linked to the negative burden of the unjust historical treatment of the Sámi people and the negative burden of discrimination based on disability. The special situation of Sámi persons with disabilities should therefore be taken into account in particular when addressing this issue.⁶²³

Another point raised by Hokkanen in the context of intersectional discrimination is the position of Sámi women with disabilities. The position of women in the Sámi community has also triggered some scientific debate⁶²⁴, and its effects are naturally reflected also in the position of women with disabilities.⁶²⁵ The Sámi community has certain expectations associated with gender, and in Hokkanen's research, informants describe situations where their parents have tried to influence the informant's choice of education and life partner. However, some informants have refused to adapt to the will of their parents, which is said to require much more effort from women than men.⁶²⁶ Also, in one interview in this study, the informant had felt that as a person with a disability and as a woman she did not feel that she was as good as the others in their own Sámi community. However, the informant did not explain this matter in any more detail, and the position of Sámi women with disabilities was not otherwise raised in the interviews in this study.

⁶²² YLE, Saamelaisten ja valtion välistä historiaa selittelevän totuuskomission perustaminen etenee (7.8.2017). Available at: <https://yle.fi/uutiset/3-9685949>; The Sámi Parliament, Saamelaiskäräjät, Muistio lähetekeskustelusta Saamelaiskäräjien kokouksessa 2/2017, 19.6.2017, 14 § Totuus- ja sovintoprosessi.

⁶²³ Interview 20.6.2017 SámiSoster ry, Ristenrauna Magga.

⁶²⁴ See also pages 177-178 in this report

⁶²⁵ Hokkanen (2017), p. 64-65.

⁶²⁶ Hokkanen (2017), p. 63-65.

5.9. Methods that emerged in the interviews to prevent discrimination in Finnish society and to support persons who have suffered from discrimination

In the interviews conducted during our project, a lot of feedback emerged on how to prevent discrimination against Sámi persons with disabilities in the future, and how people who have already suffered discrimination can be supported by the Finnish society. Some of the suggestions are clearly related to the development of Sámi-language services and some to a more general approach to improving the status of people with disabilities in society.

Raising awareness at all levels is highlighted in different contexts in the study interviews. Persons with disabilities themselves and their local communities should be provided with more information on the available support services and measures. This information should also be available in all three Sámi languages, as the related terminology can be difficult to understand, making it particularly important to be able to get the information in their native language. Information about different disabilities and special needs should be increased in society in general, because - as the interviews point out - people often do not seem to know how to act and react to different situations when a person with a disability is present. Generally speaking, knowledge related to the rights of people with disabilities is rather limited, so there should be more discussion about the rights and about the UN Convention on the Rights of Persons with Disabilities, and information about it disseminated to people.

Promoting equality through increased allocation of state resources for the development of various services, support measures and aids. It would also be important to involve people who have first-hand knowledge of the challenges caused by the disability they face in their everyday life in to this development work. Removing all kinds of obstacles in society should get more attention and people should work to improve the situation. Sámi persons with disabilities should especially receive more Sámi-language services and service guidance in order to be in an equal position with Finnish people with disabilities as well as with other people living in society in general. In addition, when making decisions on grants and planning various support measures for Sámi people with disabilities, the special features of the Sámi culture should be taken into account.

In particular concerning persons living in the Sámi homeland, the special challenges posed by the residential environment in their everyday life should also be taken into account.

It would also be important to reflect on the **positive special measures** that would help a Sámi person with a disability to attain a truly equal status with the representatives of the majority population. Currently, a Sámi, especially a person with a disability who speaks Sámi as their mother tongue, has to “fight” in their everyday life to receive even the little services available in their mother tongue. This puts the person in an unequal position compared to a person belonging to the majority population.

Developing interpreting services in all three Sámi languages is of utmost importance to promote the situation of Sámi persons with disabilities. It would be good to concentrate interpreting services in Sámi to some agency so that authorities would, for example, be able to order the service from one place.

When discussing the **development of Sámi language services**, the interviews brought up individual examples including the development of Sámi music therapy, Sámi language hearing tests and Sámi language mental health services. However, services in general should be developed.

The importance of the **development of transport services**, especially in sparsely populated areas, is high because transport services increase the self-reliance of persons with disabilities, and in some cases, this would also allow them to live at home instead of an establishment.

Taking into account the individual needs of people with disabilities in society and increasing knowledge of different disabilities in the various fields of education. Persons with disabilities should be regarded as individuals who have their own individual needs, and these needs should be genuinely taken into account in various sectors and by various authorities. When training professionals in different fields who work with people with disabilities, more should be invested in helping people take into account the individual needs of people with disabilities.

It is important to provide more training related to Sámi culture and the rights of the Sámi for different authorities, and especially for persons working with Sámi persons with disabilities. There should be separate courses about the Sámi culture and the rights of the Sámi. It would be good to integrate these themes into various education programs in the fields of health and social affairs, so that people working in the field would have at least basic capacities to understand culture-related differences in their encounters with Sámi persons. In Finnish schools in general there should also be more lessons on the Sámi, their culture and history, and the rights of the Sámi.

Meaningful training and employment opportunities for persons with disabilities should be promoted and the related system improved. Currently many persons with disabilities retire on disability pension at a young age, which is one of the major factors influencing people's exclusion in the community and in society.

Work to improve the overall attitudes to eliminate prejudices towards both persons with disabilities and Sámi persons in society is of utmost importance. In order to promote this work, it would be important to consider means and ways of working more broadly.

In the context of the reform of social and health care services, the implementation of the rights of Sámi persons with disabilities should be taken into consideration.

Sámi persons with disabilities should be supported through **planning and developing measures to handle the negative burden,** because it is one of the major factors affecting their mental well-being. This would, however, require the allocation of separate resources for design and development and subsequent implementation of planned work.

5.10. Conclusions and recommendations concerning the implementation of the human rights of Sámi persons with disabilities and the multiple discrimination they face

5.10.1 Discrimination faced by Sámi persons with disabilities

Sámi persons with disabilities are in a special position in the Finnish society because they belong to at least two different minority groups. They are both representatives of an indigenous community living in Finland and also living with a disability. In addition, they can also represent other Sámi internal minority groups such as the Inari Sámi or Skolt Sámi. This puts them in many respects in a more vulnerable position than persons with disabilities belonging to the majority population or Sámi persons that are not categorised as a person with a disability. A Sámi person with a disability also has a high risk of being subjected to multiple discrimination and many examples of different types of discrimination arise in the interviews of this study.

Simply put, multiple discrimination refers to discrimination that affects the individual on a variety of grounds.⁶²⁷ Multiple discrimination is often divided into sequential multiple, cumulative and intersectional discrimination⁶²⁸. Informants of this study report that they have encountered discrimination based on both their disability and on being Sámi. This means that they encounter multiple discrimination. All types of multiple discrimination are perceived in the situations described by the informants. When discrimination occurs on different grounds in different situations, people are facing sequential multiple discrimination⁶²⁹. For example, the structural discrimination faced by persons on the basis of disability in one particular situation and the discrimination faced by the Sámi in another situation creates a sequential multiple discrimination experience. There are also situations where discrimination is manifested in one

⁶²⁷ Makkonen (2003), p. 13-14; Fredman (2016), p. 27-28; Aaltonen et al. (2009), p. 19; Makkonen (2002), p. 9-10. See for more detail chapter 3. of this report on multiple discrimination.

⁶²⁸ See for more detail chapter 3.2.

⁶²⁹ See for more detail about the definition chapter 3.2. of this report and e.g. Aaltonen et al. (2009), p. 19. Fredman (2016), p. 27; Makkonen (2002), p. 10.

and the same situation, but on two different grounds, and that is cumulative discrimination⁶³⁰. An informant's report on the situation during their upper secondary school education, where they experienced harassment because they were Sámi and they were denied the reasonable adjustments they were entitled to on the grounds of disability to receive education equally with others, is an example of cumulative discrimination.

In our study, there are also situations that we have categorised as intersectional discrimination. Intersectional discrimination can be manifested in very specific ways when a person belongs to these two minority groups. Intersectional discrimination is therefore such that, for example, a Finnish person with a disability would not be subject to such discrimination in a comparable situation and, correspondingly, a Sámi person who lives without a disability would not face discrimination in that particular situation. In this case, a person faces discrimination both based on being Sámi and because of their disability.⁶³¹ At present, there is a shortage of Sámi-language medical tests. For example, hearing tests are not available in Sámi languages and the lack of Sámi-language testing can have a significant impact and even distort the results of the test. Most of the special support activities and related services are not available in Sámi, so for example, a Sámi child with a disability might, in practice, have to grow up as a Finnish-speaker. Additionally, when considering the various assistive devices, support measures, and the granting of related subsidies, the special features of the Sámi culture and livelihood might be ignored by the authorities. An example of this may be that a person needs a snowmobile for a reindeer herding and not an electric wheelchair.

Other similar situations that discriminate against Sámi persons with disabilities are also highlighted in the material. Discrimination can often be seen as structural discrimination, and responding to it requires both additional resources and political will. If we examine the situation using an intersectional approach

⁶³⁰ See for more detail about the definition chapter 3.2. of this report and e.g. Aaltonen et al. (2009), p. 20; Fredman (2016), p. 27; Makkonen (2002), p. 10-11.

⁶³¹ See for more detail about the definition chapter 3.2. of this report and e.g. Aaltonen et al. (2009), p. 20; Fredman (2016), p. 27-28; Makkonen (2002), p. 11; Burri & Schiek (2009), p. 4.

through the power relationships in our society⁶³², it could be stated in a simplified manner that in certain situations, a Sámi person is at a disadvantage in society compared to the majority population. There are also minority groups within the Sámi, with a weaker status than other minority groups inside the community. For example, we could also introduce gender dynamics and power relationships into our analysis, which would further complicate the analysis of discrimination cases and their detection, and the ways the authorities deal with them. The purpose of this study, however, is to focus on multiple discrimination in general and not merely on intersectional discrimination and related power dynamics.

As previously stated, this study raises a number of examples of discrimination faced by Sámi persons with disabilities based on both their Sámi identity and disability. Discrimination on the grounds of disability emerges most clearly in the material, and in such situations a person may, for example, have been deprived of reasonable accommodation that could have provided the person an equal possibility to have dealings with authorities. Information on the services for people with disabilities are not easily and clearly available and people may not even know what kind of services or support they are entitled to. Persons with disabilities also face discrimination in the workplace, both in searching for jobs and in working life. Discrimination against the Sámi is often associated with the availability of Sámi-language services. In particular, the need to develop social and health services in Sámi is raised in several contexts. In general, for example, the public debate on Sámi rights and the internal differences of opinion in the Sámi community are also perceived to have contributed negatively to the general attitude towards the Sámi.

Discrimination occurs in both indirect and direct forms. It also occurs as harassment and as refusal of reasonable accommodation. In many situations, discrimination is difficult to detect as it exists in the structures of society, and addressing it would require extensive changes in society and in the legislation. In particular, when discussing intersectional discrimination, it is problematic that legislation currently often examines discrimination in the light of individual criteria and it cannot respond to the challenges of intersectional discrimination.

⁶³² See about the theme generally e.g. Fredman (2016).

5.10.2. Promoting the rights of Sámi persons with disabilities

During the past few years, persons with disabilities have been strongly prioritized in Finland's human rights policy both at national and international levels. In 2016, Finland ratified the United Nations Convention on the Rights of Persons with Disabilities, and as a result, legislative reforms were carried out and a new structure to advance, protect and monitor the implementation of the Convention at the national level was appointed. It consists of the Human Rights Centre, the Human Rights Delegation and the Parliamentary Ombudsman. In addition, the National Council on Disability (VANE) and a permanent disability section under the Human Rights delegation, known as the Disability Rights Committee (VIOK), were set up.⁶³³ The legal status of people with disabilities has started to attract more attention from different actors and active work is needed to promote their rights. In addition, it is essential that their rights and their role in society continue to be the priorities of both national and international human rights policy and that their role and their rights also continue to be actively promoted in Finland's development cooperation.

When considering the promotion of the rights of Sámi persons with disabilities, it is essential to look at the situation through an intersectional approach. As an internal minority group of an indigenous people, Sámi persons with disabilities are also affected by the status of the Sámi and the implementation of their rights in general. In addition, the development of legislation on people with disabilities and the promotion of the rights of people with disabilities in the Finnish society are of particular importance. There are also situations in which legislation should specifically take into account the situation of Sámi persons with disabilities. In this section, we have first collected the themes that were raised in the chapter on the essential Sámi rights as issues that Finland should promote at the national level. Some of these recommendations specifically mention persons with disabilities. Thereafter, we list recommendations on promoting the implementation of the human rights of persons with disabilities.

⁶³³ See chapter 5.4. of this report. More on the theme e.g. Parliamentary Ombudsman (2016), p. 66; Ihmisoikeuskeskus (2016) (Human Rights Centre), p. 65-66.

The Sámi's constitutional right to language and culture should be properly implemented in the legislation. Linguistic rights should be strengthened in such a way that, according to the spirit of the Constitution and the purpose of the Language Act, the Sámi's right to use their own language in official contacts would also be realised in practice. The Sámi Language Act was intended to implement the goals of Sámi cultural self-government through supporting the Sámi language and culture by strengthening the official position of the language and lowering the threshold of using the language in official contexts. In this study, one of the key issues was social services and health services, where linguistic rights are poorly implemented. Services are not available in Sámi, often not even through interpreting. The linguistic rights of Sámi persons with disabilities should be ensured in the availability of services.

The human rights of the Sámi as an indigenous people should also be implemented nationally. The UN Declaration on the Rights of Indigenous Peoples should be seen as an instrument that codifies the generally accepted rights and principles concerning the protection of indigenous peoples, and Finland has committed to implementing it nationally. Finland should promote the ratification of the ILO Convention 169 and the Nordic Sámi Convention, if the Sámi Parliament supports the national implementation of these instruments.

The protection of traditional livelihoods should be strengthened in line with the recommendations of several human rights supervisory bodies. Legislation related to or directly affecting traditional livelihoods should regulate the prohibition to weaken the Sámi culture and the related impact assessment, as well as the right of appeal. As mentioned before, for Sámi persons with disabilities, it should be noted that the necessary tools might be different from those normally provided by the system in regards to the tools needed for traditional livelihoods.

The participation rights of the Sámi must be increased in decision-making concerning them and affecting them. The implementation of the obligation to ensure participation must take into account Sámi internal minority groups, such as people with disabilities. Particular attention should also be paid to the participation of potentially vulnerable groups such as women and children with disabilities, given the special status assigned to these groups in a number of human rights instruments, including the UN Convention on the Rights of Persons with Disabilities.

In the United Nations, the human rights of people with disabilities have been taken into account on a broader level since the 1970s, in the form of various declarations and action programs, and by the establishment of a Special Rapporteur's work on the promotion of the rights of disabled persons in the United Nations in 1994. All human rights treaties, of course, also concern people with disabilities. The human rights bodies overseeing them have prioritised the human rights of people with disabilities, taking into account the principle of non-discrimination.

Following the adoption of the UN Declaration on the Rights of Indigenous Peoples, attention to the rights and the status of persons with disabilities of indigenous peoples has increased, including through a study by the UN's Permanent Forum for Indigenous Issues UNPFII. The UN Convention on the Rights of Persons with Disabilities, adopted in 2006, recognizes in the preamble that states are concerned about the difficult circumstances faced by people with disabilities who are subject to multiple or aggravated discrimination, mentioning indigenous peoples as one of these groups. Multiple discrimination is also mentioned in Article 6 in relation to women and girls. In the final conclusions of the UN Committee on the Rights of Persons with Disabilities, it is noted that indigenous peoples also form a group that faces discrimination on multiple grounds. The Committee has recommended the inclusion of the concept of multiple discrimination in legislation.⁶³⁴

Section 6 of the Constitution mentions persons with disabilities separately as a group covered by the prohibition of discrimination. In addition, Section 17.3 of the Constitution provides that the rights of those who use sign language and those who need interpretation and translation assistance for reasons of disability are protected by law. For Sámi persons with disabilities, the equality provision must be read together with Section 17.3 of the Constitution, which also guarantees the rights of Sámi people with disabilities to the Sámi language and culture. There are no signs in Sámi, which can be seen as a problem in implementing the rights of Sámi persons who are hard of hearing or have a speech impairments. In the case of Sámi people who are hard of hearing or have speech impediments, a particular challenge is the lack of signs describing certain words used in the Sámi

⁶³⁴ See chapter 5.5. of this report.

language or relating to the traditional livelihoods. Other aspects of the rights of Sámi persons with hearing or speech impediments must also be ensured.

Structural barriers in society need to be dismantled and knowledge increased to ensure that the fundamental rights of the persons with disabilities and the key principles of the Convention on the Rights of Persons with Disabilities, such as respect for an individual's self-determination, non-discrimination and equality, participation and inclusion in society, as well as accessibility can be implemented at a practical level. Information must be increased so that the starting point of the Convention, acceptance of people with disabilities as part of human diversity, can be realised in the attitudes and in the ways people are treated.

Safeguarding of all the rights of the Convention on the Rights of Persons with Disabilities must also be ensured in practice, for Sámi persons with disabilities. As with other people with disabilities, freedom of movement and access to transport that is linked to accessibility, guaranteed by the Convention, are very important rights to Sámi people. In light of the materials in our research, the rights to independent living and participation in the community guaranteed by the Convention are also significant to Sámi persons with disabilities. In the case of transport services, for example, limiting them to the daytime may prevent persons in need of transport from accessing important community activities in the evenings. The agreement also safeguards the right to culture, which is also strongly linked to communality for the Sámi. Transport services should be developed so that they fully respond to the actual needs of those using them.

A report on the national implementation of the UN Convention on Persons with Disabilities under Article 4 (3) of the Convention on involving the persons with disabilities should be drawn up in cooperation with various authorities and organisations representing people with disabilities.⁶³⁵ Article 4 (3) of the Convention deals with the consultation and involvement of persons with disabilities in the preparation, decision-making and implementation, monitoring and evaluation in matters relating to them. It would be essential to consider how the obligation to ensure involvement is actually implemented in Finland and how

⁶³⁵ The Human Rights Centre has proposed this as a response to the proposal by VIOK. Ref: Proposal by the Disability Rights Committee (VIOK) proposal to the Human Rights Centre and the Human Rights Delegation 20.4.2017, Response by the Human Rights Centre, IOK 31/2017, 23.5.2017., p. 3.

implementation could be advanced. It would also be important to raise awareness among the various authorities in general about the obligation to involve the persons with disabilities. The implementation of the participation of Sámi persons with disabilities under the Convention should also be investigated and strengthened.

The reform of legislation on disability services should be completed in such a way that it also takes into account the particular needs of special groups, such as Sámi persons with disabilities, in accordance with the proposals of the Sámi Parliament. Self-determination and the linguistic and cultural rights of Sámi persons with disabilities must also be implemented in the reform of legislation on disability services. In addition, legislative reform on strengthening the right of self-determination of social care clients and health care patients should be completed.

The rights of persons with disabilities must be safeguarded in the context of regional reforms, for example by ensuring the participation of regional disability councils, in order to give them real authority to promote equal opportunities for persons with disabilities and to submit proposals for the development of services.⁶³⁶ The accessibility of services must also be achieved in the activities of the provinces. Participation of Sámi persons with disabilities in the regional disability councils should be ensured.

The Procurement Act should be revised and amended so that it shall not apply to the purchase of such services for persons with disabilities, which concern the needs of immediate care and support of persons with disabilities in housing and in everyday life. The Disability Forum and the Housing Advisory Board for persons with Intellectual and Developmental Disabilities have pointed out that, based on experience, the tendering procedure does not allow people with disabilities to be involved in or to influence decision-making about themselves, which is contrary to the provisions of the Convention on the Rights of Persons with Disabilities, particularly Article 4 (3).

⁶³⁶ The Disability Rights Committee requests that the participation of persons with disabilities be taken into account in the Social and Health Service reform and the regional reform. Statement to the Human Rights Centre and the Human Rights Delegation, <http://kynnyp.fi/news/vammaisten-henkiloiden-ihmisoikeuskomitea-pyytaa-huomioimaan-vammaisten-osallistamisen-sote-ja-maakuntaudistuksessa/>

Legislators and law enforcement authorities should recognise the phenomenon of multiple discrimination and the fact that discrimination on multiple grounds needs to be prevented by effective positive action, for which the normative basis of more than one legal category may be applicable. For example, the rights of Sámi persons with disabilities or persons belonging to sexual and gender minorities should be implemented both as Sámi rights and as rights of persons belonging to the aforementioned groups. In addition, the concept of multiple discrimination should be explicitly introduced as a discrimination criterion in the Non-discrimination and Equality Acts. Such a reform of legislation has also been recommended by the Committee on the Rights of Persons with Disabilities in its conclusions on country reports from several countries.⁶³⁷

5.10.3. Eradicating and preventing discrimination faced by Sámi persons with disabilities at the level of practical actions

The materials of this study show that disability as an abstract umbrella concept and category seems to have been adopted in the Sámi community quite late⁶³⁸. The study's interview material reveals that the concept was originally introduced by the spread of Western medicine into the Sámi community. Based on the survey conducted during the project, the researchers have come to the conclusion that in the past, the Sámi would have referred to separate individual disabilities rather than generally categorising people as persons with disabilities. However, it would be relevant and advisable to carry out more extensive research and to explore, for example, how the concepts and thinking adopted from the Finnish society may have influenced the position of Sámi persons with disabilities in the Sámi community.

Raising awareness in all sectors of society and between different actors is essential in order to improve the atmosphere and attitudes toward people with disabilities. Some of the people interviewed in our project feel that raising awareness of people with disabilities in general among people is one of the most significant actions in the field of anti-discrimination. However, access to information should also be increased for people with disabilities, for example

⁶³⁷ See chapter 5.5.

⁶³⁸ See for more detail in chapter 5.1. of this report.

concerning the available services. In such situations, it would be particularly important to also increase clearly expressed information on people with disabilities in the Sámi languages.

Equality should be promoted throughout society, in addition to legislation, and also in other ways. The accessibility of society to persons with various disabilities should be guaranteed in their everyday life, and steps should be taken to actively eliminate barriers. Different disabilities pose different challenges in the lives of individuals and this report has only been able to deal with a fraction of the particular needs of various disabilities. However, the different challenges that arise from different disabilities should be actively mapped and discussed together with people who have experience with them. Specific measures should also be considered in a broader cooperation with Sámi persons with disabilities or their representatives.

Interpreting services in Sámi should be developed and should be centralized so that the authorities could book interpretation services from one place. This would improve the status and legal protection of Sámi people and help make the work of the authorities more effective. In addition, providing services in all three Sámi languages should be increased in particular in healthcare and social services.

When a variety of aids and support measures are acquired as part of social services, the authorities may ignore the specific features of the Sámi culture and livelihoods. By denying a person, for example, support for an assistive device that would be necessary for the pursuit of a traditional livelihoods, the risk of the person being excluded from the community is increased. It is also important to take into account the special features of the Sámi culture in order to promote their well-being.

Training on Sámi culture and Sámi rights should be increased throughout the society. Training in different fields should emphasize the importance of a culturally-sensitive approach and, in particular, professionals in healthcare and social services working with Sámi people should be provided with sufficient knowledge of the Sámi culture and its specific features, for example through various training courses.

Opportunities for the training and employment of persons with disabilities need to be improved, as meaningful education and employment are important in preventing discrimination. In addition, special attention needs to be paid to the provision of reasonable adjustments in training and work in order to ensure the person's access to equal opportunities.

In order to improve the mental well-being of Sámi persons with disabilities, the state should support the design, development and implementation of measures to assist in the handling of the negative burden they might carry. This would require the allocation of separate resources to implement a project specifically for this purpose.

At present, there already has been some research into Sámi persons with disabilities in Norway and Sweden, but there is much less research in Finland and Russia⁶³⁹. It would be a good idea to study this topic more extensively, and in particular, there is a need for research on the situation of Sámi children with disabilities.

⁶³⁹ Chapter 5.3. of this report presents existing research in more detail. See also e.g. Nordic Welfare Centre (2014), p. 27-28; Melbøe et al. (2016a); Uttjek (2016), Edin-Liljgren & Flykt (2017); Hokkanen (2017); Melbøe et al. (2016b); Fedreheim et al. (2017).

6. Sámi persons identifying as a sexual and/or gender minority

Discussion on the rights of persons identifying as a sexual and gender minority is increasingly present in both international⁶⁴⁰ and national arenas. Finland has elevated sexual and gender minorities as one of the priorities of its human rights policy, and stresses the importance of eliminating discrimination, including in legislation and in the actions of authorities, but also more widely elsewhere in the society.⁶⁴¹

As discussed in the next chapter, persons belonging to sexual and gender minorities are still, even after 100 years of Finland's independence, facing challenges in the implementation of their human rights and fundamental freedoms. What are the challenges facing a person who, in addition to identifying as a sexual and/or gender minority, is also a Sámi and is thus a member in at least two different minority groups in the Finnish society? This chapter introduces the existing debates in social science regarding the societal aspects of sexuality and gender in order to contextualize sexual and gender minorities. Although this study does not directly rely on the theories presented, their inclusion provides a necessary outline of the basis for societal debate regarding sexuality and gender. This will be followed with a discussion on sexual and gender minorities and their status in the Sámi community. The position of sexual and gender minorities in Finland's human rights policy is addressed in its own section, as well as their human rights and the challenges they face in national legislation. Finally, we analyse the five semi-structured personal interviews⁶⁴² and the information

⁶⁴⁰ See e.g. Council of Europe Committee of Ministers, Recommendation CM/Rec(2010)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity and on the UN level inter alia in the human rights council e.g. A/HRC/RES/32/2, A/HRC/RES/17/19, A/HRC/RES/27/32.

⁶⁴¹ Ministry for Foreign Affairs of Finland, Ulkoasiainministeriö, Suomen kansainvälinen ihmisoikeuspolitiikka. Available at:

<http://formin.finland.fi/Public/default.aspx?nodeid=49583&culture=fi-FI&contentlan=1>.

⁶⁴² The interviews were conducted between May 9 and August 14, 2017.

gathered in two workshops⁶⁴³ for representatives of Sámi persons belonging to sexual and/or gender minorities, that were conducted over the duration of this research project. We examine their views on their position in the Finnish and Sámi societies as well as on the multiple discrimination that they may encounter, and discuss possible solutions to improve the situation.

6.1. Brief overview of theoretical debates regarding sexual and gender minorities

Academic and theoretical discussion about sexual and gender minorities has increased, evolved and progressed over time, adapting to the spirit of each age. Today, queer theory examines concepts of sex and gender and is applied in a number of disciplines⁶⁴⁴. The word *queer*⁶⁴⁵ can be used, differently in various contexts, and it is difficult, if not impossible, to give a generally and unanimously accepted definition. Today, the term is often used as an umbrella concept for sexual and gender minorities, and/or a way of thinking and/or theory that questions normative established perceptions about gender or sexuality and criticises the social norms that derive from them.⁶⁴⁶ In the course of history, however, the word has been used, among other things, as a derogatory word for homosexual men, and it was reintroduced only in the late 1980s, when people started to question the universal use of terms *homosexual*, *gay*, or *lesbian* in research.⁶⁴⁷ The rules of the Finnish queer studies association define queer studies as "[...] *critical study of gender and sexuality, for example lesbian, gay,*

⁶⁴³ The workshops were organised in Sajos in Inari and at Hotel Kultahovi on August 17, 2017 as a part of the official program of Sápmi Pride. See also YLE, May 2.2017, "Árktalaš guovddáš ordne bargobaji sámi seksuálalašvehádagaid rivttiin". Available at: https://yle.fi/uutiset/osasto/sapmi/arktalas_guovddas_ordne_bargobaji_sami_seksualalasvehadagaid_rivttiin/9590861.

⁶⁴⁴ See e.g. Miettinen, Sari, "Queer-tutkimus", in Kouri, Jaana, (ed.), *Askel kulttuurien tutkimukseen, Folkloristiikka, kansantiede ja uskontotiede*, Turun yliopisto, Turku (2015), p. 276.

⁶⁴⁵ If translated literally into Finnish, the word *queer* means *strange, odd, peculiar or (sexually) deviant* (MOT dictionary).

⁶⁴⁶ Jagose, Annamarie, *Queer Theory, An Introduction*, New York, New York University Press (1996), p. 96-100. See also Miettinen (2015), p. 275-277.

⁶⁴⁷ Jagose (1996), p. 1, 74 & 93-94. See also Miettinen (2015), p. 275.

*trans or bi studies, and the study of heteronormativity and heterosexuality [...]”*⁶⁴⁸.

Over the last decade, intersectionality has also become an important part of queer theory. Research is increasingly focused on the ways ethnicity, race, gender, age or geographical location affect the experiences and the status of actors in the society and communities. Intersectional queer theory is also strongly linked to a critical approach that stems from the postcolonialist research tradition, which examines, among other things, the colonial power relationships that exist in different knowledge systems.⁶⁴⁹ Intersectionality is also strongly present in the conceptualisation of this study, and we will discuss it in more detail in chapter 3.2.1. of this report.

6.1.1. Briefly on the theory of genders

Queer theory is strongly influenced by Michel Foucault's ideas about the construction of gender-related discourses and the relationship between power and the production of knowledge.⁶⁵⁰ Feminist philosopher Judith Butler also reflects these ideas in the theorization and criticism of the sex/gender division that was raised particularly in the feminist discourse in the 1970s. As in Finnish language, the words sex and gender both translate to “gender”⁶⁵¹; Finnish-language research uses the concepts of biological or anatomical-physiological and social or historical-cultural gender.⁶⁵² Butler notes that gender is produced in discourses

⁶⁴⁸ Suomen queer-tutkimuksen seura, Säännöt, 2§ Purpose and nature of activities. Translated by Maija Myllylä. Available at: <https://sqshome.wordpress.com/2007/04/06/saannot/>.

⁶⁴⁹ Ilmonen, Kaisa, ”Intersektionaalisen queer-tutkimuksen kytkentöjä: Pohdintoja postkoloniaalisen ja intersektionaalisen seksuaalisuudentutkimuksen lähtökohdista ja keskeisistä kysymyksistä”, *SQS, Pervoskooppi Articles*, (2011):2, 1-6.

⁶⁵⁰ See e.g. Miettinen (2015), 276. See also Foucault, Michel, *Seksuaalisuuden historia*, (Finnish translation Sivenius, Kaisa) 2nd revised edition, Helsinki: Gaudeamus Helsinki University Press, 2010; Løvold, Ane Hedvig Heidrunsdotter, *The silence in Sápmi – and the queer Sámi breaking it*, Thesis submitted for the Degree of Master of Philosophy in Indigenous Studies, The Arctic University of Norway, (2014), p. 13-14.

⁶⁵¹ The Finnish word used is *sukupuoli*.

⁶⁵² Ahonen, Johanna, Hynninen, Anna, Kouri, Jaana & Mahlamäki, Tiina, ”Ruumiillisuus”, in (ed.) Kouri, Jaana, *Askel kulttuurien tutkimukseen, Folkloristiikka, kansantiede ja uskontotiede*, Turun yliopisto, Turku (2015), p. 274 & 277; Koivunen, Anu & Liljeström, Marianne,

to serve the prevailing political system and it is in a way a product of power.⁶⁵³ The division into biological and social gender has been criticized for treating biological gender as natural, and without need for further questioning. According to Ahonen et al. (2015), however, both Butler's and Foucault's approach have attracted criticism for the fact that the body can almost completely disappear in defining gender, if everything becomes culture.⁶⁵⁴

The division into biological and social gender has raised criticism also among other feminist researchers who have approached gender, among other things, from a constructivist point of view by looking at the biological gender as a construction that adapts to its time and culture to form the so-called "natural" biological base of its time.⁶⁵⁵ Biological gender refers to the male-female dichotomy in the aforementioned division, but according to critical views, its "naturalness" is based on only one aspect of biology - reproduction. For example, the existence of intersex and transgender individuals can be considered as an indication that it is not possible to divide gender into only two groups.⁶⁵⁶

When discussing gender concepts and definitions, however, it is important to remember that theoretical discussion on the subject is often conducted by Western researchers. Linda Tuhiwai Smith (1999), for example, emphasizes the importance of including indigenous peoples and their perspectives in research.⁶⁵⁷ When discussing gender roles, for example, Smith emphasizes that the concept of gender has originally been adopted from the West. This also applies to the concept of race, and these two concepts often intersect.⁶⁵⁸ In the book *After*

"Kritiikki, visiot, muutos – feministinen purkamis- ja rakentamispurjehdus", in Koivunen, Anu & Liljeström, Marianne, (ed.) *Avainsanat. 10 askelta feministiseen tutkimukseen*, Tampere: Vastapaino (2004), p. 22; See also Butler, Judith, *Gender Trouble. Feminism and the Subversion of Identity*, Tenth Anniversary Edition, Ebook, Taylor and Francis Group, (1999).

⁶⁵³ Butler (1999). See also Ahonen et al. (2015), p. 277-279.

⁶⁵⁴ Ahonen et al. (2015), p. 274-279.

⁶⁵⁵ Koivunen & Liljeström (2004), 22. See also Ahonen et al. (2015), p. 274.

⁶⁵⁶ Hird, Myra J. "Gender's nature. Intersexuality, transsexualism and the 'sex'/'gender' binary", *Feminist Theory*, vol. 1(3), (2000), p. 348-350. See also Ahonen et al. (2015), p. 274.

⁶⁵⁷ Smith, Linda Tuhiwai, *Decolonizing Methodologies. Research and indigenous peoples*, London & New York: Zed Books Ltd. (1999).

⁶⁵⁸ Smith (1999), 45. See in more detail also about critique of intersectionality Ilmonen, Kaisa, "Intersektionaalisen queer-tutkimuksen kytkentöjä: Pohdintoja postkoloniaalisen ja

Identity: Rethinking Race, Sex and Gender, Georgia Warnke considers that racial and gender identities are linked and interpreted in different ways in different situations, and that their meaning is therefore determined by, and dependent on, the context of their interpretation.⁶⁵⁹ Although, in this study we refer to an ethnic indigenous group, rather than a distinct race, both the ideas and theory of Smith (1999) and Warnke (2008) can be applied to examine their intersectionality with gender.

This research project deals with multiple discrimination and does not specifically focus on gender studies. However, the way a Sámi person experiences gender and whether this differs from the way a Finnish person experiences gender, would be a relevant topic for further research within gender studies. One informant raised this question when considering the differences between a Sámi woman and a Finnish woman. They noted that women are faced with different expectations in the Sámi community than in Finnish society, which affects what is included in the Sámi concept of femininity, and what is included in Finnish idea of femininity. We could therefore assume that the situation might be the same also when considering broad perceptions of gender.

6.1.2. Definitions of sexuality

Similarly to discourses on gender, discourses surrounding the definition of sexuality are also strongly linked to a certain time and culture⁶⁶⁰. Sexuality, like gender, can be viewed from a variety of perspectives either as a physio-biological, psychological or cultural-social phenomenon. According to Foucault's view, sexuality is, as is the case with gender, strongly linked to power.⁶⁶¹ Foucault also states that, for example, homosexuality became its own category only towards the end of the 19th century (more specifically, he defines year 1870 as the moment of the term's inception) when it was decided that it

intersektionaalisen seksuaalisuudentutkimuksen lähtökohdista ja keskeisistä kysymyksistä”, *SQS*, Pervoskooppi artikkelit, (2011), p. 12-14.

⁶⁵⁹ Warnke, Georgia, *After Identity: Rethinking Race, Sex and Gender*, eBook, Cambridge University Press (2008).

⁶⁶⁰ See e.g. Aldrich, Robert, ”Homojen ja lesbojen historia”, in Aldrich Robert (ed.), *Rakkaus samaan sukupuoleen*, (suom. Ketola, Veli-Pekka). Multikustannus Oy, (2006).

⁶⁶¹ Jagose (1996), p. 79; Miettinen (2015), p. 276; Foucault (2010).

would be described as a medical, psychiatric and psychological category. Before, for example, the judiciary focused on assessing individual homosexual acts, but after homosexuality was defined, it began to be seen as an internal feature of human beings. As a result, homosexuality was also distinguished from the so-called “natural” sexuality, that was, heterosexuality.⁶⁶² According to Foucault, homosexuality can thus be seen as a kind of discourse produced by power⁶⁶³, and in the article *Queer-tutkimus* (2015), Sari Miettinen notes that in the light of this information, it is not possible to determine the naturalness or unnaturalness of different sexual orientations⁶⁶⁴.

6.2. On research of the history of Sámi persons identifying as a sexual and gender minority and on Sámi language terminology

Historical research shows that physical and emotional relationships between persons of the same sex have existed throughout the ages and across various cultures around the world. For example, same-sex relationships appear in written text such as the Epic of Gilgamesh which dates back to the 18th century BCE, and similar descriptions can also be found in mythologies from ancient Greece, as well as texts from China and India around 200 BCE. Attitudes towards sexual and gender minorities, on the other hand, have varied depending on the time period, and they still vary across cultures and societies from acceptance and respect to their condemnation and prohibition.⁶⁶⁵

Among indigenous peoples, the history of sexual and gender minorities and the terminology used to discuss them have already been studied to some extent, and one of the most common examples is a study carried out among indigenous peoples in North America.⁶⁶⁶ In the 19th and early 20th centuries, non-indigenous

⁶⁶² Foucault (2010), p. 34-40. See also Miettinen (2015), p. 276.

⁶⁶³ Jagose (1996), p. 80.

⁶⁶⁴ Miettinen (2015), p. 276.

⁶⁶⁵ Aldrich (2006), p. 1- 2.

⁶⁶⁶ See e.g. Medicine, Beatrice, “Directions in Gender Research in American Indian Societies: Two Spirits and Other Categories”, *Online Reading in Psychology and Culture*, 3(1), (2002). Available at: <http://scholarworks.gvsu.edu/orpc/vol3/iss1/2/>. Lang, Sabine, *Men as Women, Women as Men. Changing Gender in Native American Cultures*, USA: The University of Texas Press, (1998); Willimas, Walter L. *The ‘Two-Spirit’ People of Indigenous North Americans*,

persons began to document information on male persons belonging to the indigenous communities in North America, who could change gender roles, and whose conduct was deemed to have detectable homosexual features.⁶⁶⁷ As the number of studies increased, so too did attempts to understand this sexually “deviant” behaviour, which did not fit the worldview of the Western heteronormative society, by classifying persons under the concepts used in the West. Because attitudes towards understanding the nature of human sexuality and gender are in many ways culture-specific, western labels used in an indigenous contexts are often considered derogatory to the indigenous peoples in Northern America. Using western terms can also obscure the nuances of a specific tribe’s existing terminology.⁶⁶⁸ In 1990 indigenous persons across North America who identified as a sexual or gender minority decided to use the term “*two spirit*”, originating from the Anishinabe tribe’s (Ojibway) term, *neizh manitoog*.⁶⁶⁹ As the term was chosen jointly by indigenous representatives, and it is seen to better reflect their own perception of sexuality and gender, it has been widely adopted amongst, and when discussing, indigenous sexual and gender minorities in North America.⁶⁷⁰

The history of sexual and gender minorities among tribes in Sub-Saharan Africa, has also been studied to some extent, although written information is still limited. Regarding indigenous peoples in Oceania, however, primary observations on the subject have been made since the 18th century, and later more material has accumulated since.⁶⁷¹ However, it is important to note that these accounts are often written by people who are not members of the communities they document,

First People. Available at: <http://www.firstpeople.us/articles/the-two-spirit-people-of-indigenous-north-americans.html>.

⁶⁶⁷ Lang (1998), 26. See generally on the theme also Wallace, Lee, ”Homoseksuaalisuuden löytäminen: kulttuurien välinen vertailu ja seksuaalisuuden historia”, in Aldrich Robert (ed.), *Rakkaus samaan sukupuoleen*, (Finnish translation by Ketola, Veli-Pekka). Multikustannus Oy, (2006).

⁶⁶⁸ Medicine (2002); Williams 18.10.2017. See also Lang (1998), p. 27-46; Warnke (2008), p. 20; Driskill, “Doubleweaving two-spirit critiques. Building Alliance between Native and Queer Studies”, *GLQ: A Journal of Lesbian and Gay Studies*, Vol. 16. Number 1-2 (2010), p. 69-92; Løvold (2014), p. 29; Wallace (2006), p. 249-250.

⁶⁶⁹ Medicine (2002), p. 8. Two spirit is a direct translation of the words *neizh manitoog* (Medicine (2002), p. 8).

⁶⁷⁰ Williams 18.10.2017; Driskill (2010), p.72. See generally also Medicine (2002).

⁶⁷¹ Wallace (2006), p. 255-268.

and therefore they do not necessarily reflect the indigenous communities' own perceptions or experiences of gender and sexuality, which has received criticism from indigenous peoples and scholars.⁶⁷²

Among the Sámi there is no existing research on the history of sexual and gender minorities, which has been noted in earlier scientific publications⁶⁷³ about these minority groups, and in the interview material of this study. One informant notes that studying the history of queer Sámi would be really important for Sámi sexual and gender minorities. They note that at present, a large part of the history of sexual and gender minorities has been written from a Western point of view, which they believe also has an effect on the identity of the Sámi belonging to these minority groups, and that the Sámi identity and queer identity are in some cases felt to be separate. Some of the other informants also pointed out that in some situations they cannot be openly both Sámi and representatives of their identified sexual and/or gender minorities. This point was made and discussed also in both workshops organised during the project.

Research into Sámi queer history could, for its part, strengthen the Sámi LGBTIQ community in constructing an unimposed identity that may have more “authenticity,” as it would be based on stories and history stemming from among the Sámi themselves⁶⁷⁴. For example, historian Samuli Aikio notes in an interview with YLE on January 27, 2017 that: *“[the phenomenon is actually not new among the Sámi. Sámi, like other indigenous peoples living from the nature, have always known also all kinds of special cases. Nature teaches us”*⁶⁷⁵. One informant believes that research into the queer history of the Sámi might also

⁶⁷² See generally Smith (1999).

⁶⁷³ See Løvold (2014), 18; Mattanen, Leena, ”Täytyy puhua enemmän. Hiljaisuus ei ratkaise ongelmia.” Queer-saamelaisen hyvinvoinnin ja pärjäämisen edellytykset, Pro gradu-tutkielma, Giellagas-instituutti, Oulun yliopisto, (2016), 9-11.

⁶⁷⁴ See also Suoma Sámi Nuorat, Queering Sápmi: jälkimietteitä. Available at: <http://www.ssn.fi/queering-sapmi-jalkimietteita/>. (Published 23.9.2013). Mattanen (2014), 19; Løvold (2014), 24-32.

⁶⁷⁵ YLE Sápmi, ”Historioitsija: Entisajan saamelaiset sietivät hyvin homoseksuaalisuutta”, 27.1.2016, updated 21.8.2017. Available at: <https://yle.fi/uutiset/3-8626978>. (Read on 20.10.2017).

encourage hetero-cis⁶⁷⁶ Sámi to critically examine practices and cultural approaches possibly adopted from Western cultures. The informant also expressed that it would be important for LGBTIQ Sámi to begin to investigate these histories and practices as well. The criticisms made in this chapter regarding the prevalence of history written from the viewpoint of Western scientists, in addition to criticisms of earlier projects regarding Sámi sexual and gender minorities, support the above points expressed by our informants⁶⁷⁷.

One informant also questions the inclusion of the two spirit views of the North American indigenous people directly into the Sámi worldview, as it does not originate from the history of their own people. However, the informant feels that it is better to identify with the notions of other indigenous peoples than with the ideas stemming from Western norms, as an approach of questioning Western mainstream norms is better suited to the Sámi culture. Earlier research on the topic shows that Sámi sexual and gender minorities are already to some extent familiar with the two-spirit concept and some seem to have incorporated it into their own identity as well⁶⁷⁸. Ane Hedvig Heidrunsdotter Løvold (2014) sees the use of the two spirit concept and ideology as a possible decolonization strategy aimed at resisting the standards set by western states and the sexual and gender norms Christianity brought to the Sámi homeland.⁶⁷⁹

In addition to research on the history of sexual and gender minorities, one cannot find research on terminology referring to sexual and gender minorities previously used in Sámi languages. The only word in the North Sámi language that has come to the attention of the researchers in this project, which has been used to refer to

⁶⁷⁶ Seta defines the word cis as follows: *"Word cis is used to describe a situation where a person's gender identity and gender expression match the sex they were assigned at birth and the corresponding cultural expectations."* (Seta, Sateenkaarisanasto. Available at: <http://seta.fi/sateenkaarisanasto/>. (Updated 12.12.2016.))

⁶⁷⁷ Hirvonen, Vuokko, "Máŋggajienat Sápmi: Seksuála ja sohkabeallenorpmaid čalmmustahtti mitalusaid girjáivuolta", *Sámi dieđalaš áigečála* 2(2014): p. 72. Available at: <http://site.uit.no/aigecala/files/2015/04/SDA-2-2014-arvvostallan-hirvonen.pdf>.

⁶⁷⁸ Løvold (2014), p. 24-31. See also Mattanen (2016), p. 21.

⁶⁷⁹ Løvold (2014), p. 61.

a woman loving a woman, is *sparronisu*.⁶⁸⁰ *Sparru* means a support batten or a bifurcated branch,⁶⁸¹ and it illustrates well the Sámi style of using symbolic expressions. Another term that has only recently been adopted into the North Sámi language is *bonju*, which is a direct translation of the Norwegian word signifying queer, *skiev*.⁶⁸² According to Sammallahti's (1993) *Sámi-Finnish-Sámi Dictionary*, the word *bonju* means crooked or *twisted* in Finnish, and all the Sámi belonging to sexual and/or gender minorities do not feel that it is their own term⁶⁸³. Furthermore, as Løvold (2014) also points out, words and language are linked to culture. In translating a word for queer directly from Norwegian to North Sámi, there is still a risk that it also reinforces the Western discernment of sexuality and gender.⁶⁸⁴

In addition to loan words or direct translations, the researchers of this project have not found other words describing persons belonging to sexual and gender minorities that would have originally been used in three Sámi languages spoken in Finland. This means, therefore, that at least to the knowledge of researchers, there are no Skolt Sámi or Inari Sámi expressions to describe persons belonging to sexual and gender minorities⁶⁸⁵. The development of the vocabulary at least for North Sámi is ongoing, although still not completed.⁶⁸⁶ Concerning the Inari Sámi language, the development of the vocabulary has also been discussed recently in the Inari Sámi language division.⁶⁸⁷ Research into the history of Sámi sexual and gender minorities might also uncover answers to questions regarding previously used terminology, which would be particularly important for the empowerment of the community⁶⁸⁸.

⁶⁸⁰ Saaristo, Sari, "Tarina sisaruudesta rikkoo saamelaisia tabuja", Kirkko ja kaupunki. Available at: <https://www.kirkkojakaupunki.fi/-/tarina-sisaruudesta-rikkoo-saamelaisia-tabu-1>. (Published 22.1.2016) See also Mattanen (2016), p. 21.

⁶⁸¹ Saaristo (2016).

⁶⁸² Løvold (2014), 65. See also Mattanen (2016), 21.

⁶⁸³ This can be also seen in Løvold (2014, 65) who writes that in the interviews they collected, only one of their informants used the word *bonju*.

⁶⁸⁴ Løvold (2014), p. 64 -67. See also Mattanen (2014), p. 21.

⁶⁸⁵ We have consulted with the language office of the Sámi Parliament and Sámi language speakers in the Sámi community. (Emails with Giellagáldu language employees 11.9.2017 and 9.10.2017.)

⁶⁸⁶ Emails with Giellagáldu language employee 11.10.2017.

⁶⁸⁷ Emails with Giellagáldu language employee 9.10.2017.

⁶⁸⁸ See e.g. Suoma Sámi Nuorat 23.9.2013; Mattanen (2014), p. 19-21; Løvold (2014), p. 64-67.

6.3. Previous research on sexual and gender minorities in the Sámi community

There has been little research on the current state of Sámi sexual and gender minorities, especially in Finland. In Norway, a few articles have been written⁶⁸⁹, and in 2009 a study published by the Fafo Foundation, *Lesbiske og homofile i Sápmi. En narrativ levkårsundersøkelse* (Grønningsæter & Nuland 2009.) has, in a certain way, served to open discussion on the subject. The study aimed to produce information and to make visible the presence of Sámi peoples identifying as a sexual minority, which had previously been quite invisible in research and politics. The study report addresses the challenges faced by multiple minorities, and highlights the everyday experiences of Sámi peoples identifying as a sexual minority.⁶⁹⁰ In addition, at least two Master's theses have been published on the Norwegian side of Sápmi during the last few years. One of them, *The silence in Sápmi – and the queer Sámi breaking it* (Løvold 2014.), discusses the status of queer Sámi in the Sámi community today, and examines the silence of the sexual and gender minorities in the Sámi community. Although the research focuses mainly on Sámi living in Norway, one person has also been interviewed in Sweden. The Sámi people living in Finland are included in the text through material collected during fieldwork, but the situation of the Sámi living in Russia is not discussed in the study.⁶⁹¹ Another graduate study published in Norway also addresses sexual and gender minorities by examining heteronormativity in Sámi literature⁶⁹².

In Finland, Leena Mattanen published in 2016 a pro gradu thesis *”Täytyy puhua enemmän. Hiljaisuus ei ratkaise ongelmia.” Queer-saamelaisten ja hyvinvoinnin ja pärjäämisen edellytykset* (“*We must speak more, silence does not solve problems. The Queer Sámi and the prerequisites for wellbeing and coping*”)

⁶⁸⁹ See e.g. Giertsen 2003.

⁶⁹⁰ Grønningsæter, Arne Backer & Nuland, Bjørn Richard, *Lesbiske og homofile i Sápmi. En narrativ levkårsundersøkelse*, Fafo-rapport (2009) 26.

⁶⁹¹ Løvold (2014).

⁶⁹² Oskal, Berit Margrethe, *Garra boját ja fiinna nieiddat. Heteronormativitehta sámii čáppagirjjálašvuodas, Sámi girjjálašvuoda masterdutkanmuš*, The Arctic University of Norway, (2015).

(Mattanen, 2016). The study analyses interviews presented in the book and project, *Queering Sápmi- Saamelaisia kertomuksia normien ulkopuolelta* (*Queering Sápmi – Indigenous stories beyond the norm*) (Bergman & Linquist 2014) regarding the Queering Sápmi project, and through subsequent analysis highlights the challenges facing queer Sámi in the Sámi culture, and their means of coping with those challenges⁶⁹³.

On the Swedish side, the Queering Sápmi project (mentioned above) and book published at the culmination of the project, addressed gender and sexual minorities in the Sámi community through personal interviews, which have greatly contributed to the discussion on Sámi sexual and gender minorities. Most of the interviewees appear in the book with their own name. Interviews have been conducted with queer Sámi people living in Norway, Sweden and Finland. The Russian Sámi were not involved in this project either.⁶⁹⁴ Through interviews and images this work manages to touch the reader and convey an image of the everyday life of LGBTIQ Sámi and the challenges they face. At least four of the interviewees are Sámi living in Finland, and the issues raised in their stories are partly reflected in the analysis of this report.⁶⁹⁵

Regarding this research project, we are not aware of any previous research into the human rights and multiple discrimination of Sámi individuals living in Finland who identify themselves as belonging to sexual and gender minorities. On the state level, the scarcity of research on these minority groups can partly be explained by the fact that the Sámi are one indigenous peoples, which, as a result of the imposition of national borders, has been divided across four different states⁶⁹⁶. However, in the context of examining legal issues with regard to multiple discrimination, it is also justified to approach the issue on a country-by-country basis, as the legislation of each country has a significant impact on, inter alia, the status of Sámi peoples in society, and the discrimination they are

⁶⁹³ Mattanen (2016), p. 1-2.

⁶⁹⁴ Bergman, Elfrida & Linquist, Sara, *Queering Sápmi. Indigenous stories beyond the norm*, (Translated by Hincks, Mikaela, Sweet Translations), Umeå: Qub Förlag, (2014). See also Mattanen (2016), p. 2-7.

⁶⁹⁵ Bergman & Linquist (2014), p. 118-129, p. 168-173, p. 202-213 & p. 296-315.

⁶⁹⁶ See e.g. Løvold (2014), p. 2.

experiencing⁶⁹⁷.

6.3.1. Silence surrounding Sámi persons identifying as a sexual and/or gender minority

In the previously discussed literature and research on Sámi sexual and gender minorities, discourses of silence and the breaking of silence have had a rather central role in recent years.⁶⁹⁸ The Fafo report (Grønningsæter & Nuland 2009) highlighted the invisibility of Sámi persons identifying as a sexual minority in both the Sámi community and society in general⁶⁹⁹. After the publication of the report, people have wanted to intervene and make them more visible in both academic and other fields of discussion.⁷⁰⁰ The silence around sexual and gender minorities is often dealt with within the inner context of the Sámi community, where silence is seen even as somewhat of a norm.⁷⁰¹ One of our research informants also brought up the Sámi culture of silence. The informant expressed that often discussion is not possible and issues cannot be addressed, which encourages a negative silence in the Sámi community. Family honour is very important in the Sámi community, and even though the family knows that the informant identifies as a sexual and/or gender minority, it is undesirable to discuss in certain situations, and other members of the family do not want to talk about it.

Veli-Pekka Lehtola (2015) among others has written about the Sámi culture of silence in the book *Saamelaiskiista. Sortaako Suomi alkuperäiskansaansa?* ("The Sámi Controversy, Is Finland Discriminating against its Indigenous People?"), where he points out that silence can also be a sign that the community, in this case the Sámi, has experienced and still experiences oppression. If there is a

⁶⁹⁷ See on the differences in national legislations e.g. Allard, Christina, "Some Characteristic Features of Scandinavian Laws and their Influence on Sámi Matters, in *Indigenous Rights in Scandinavia*". *Autonomous Sámi Law* (eds. Allard, Christina & Skogvang, Susann Funderud, Surrey, UK: Ashgate Publishing limited, (2015).

⁶⁹⁸ See e.g. Bergman & Linqvist (2014); Mattanen (2016); Løvold (2014); Grønningsæter & Nuland (2009).

⁶⁹⁹ Grønningsæter & Nuland (2009), p. 76-81.

⁷⁰⁰ Bergman & Linqvist (2014); Mattanen (2016); Løvold (2014).

⁷⁰¹ Mattanen (2016), p. 28 & 32.

collective feeling that talking about an issue is pointless, the situation may frustrate the community and ultimately lead to its withdrawal.⁷⁰² In other words, when examining the Sámi culture of silence, it is also important to remember the impacts of the colonialist actions of states on the Sámi, the impact of assimilation policies on the current state of the community, as well as the potential implications of these impacts on adopting certain practices.⁷⁰³ For example, the previously mentioned informant also expressed that the experiences of the Sámi in residential schools have also had an effect on the culture of silence living in the Sámi community today.⁷⁰⁴

In examining the silence associated with discussing Sámi LGBTIQ people, there may be several factors underlying its presence. Silence could show that it is not accepted within the Sámi community, or on the contrary, that there is general approval and therefore no need for further discussion. On the other hand, silence may also be due to other factors, for example, the insecurity of older people that feel they do not have sufficient knowledge of the issue.⁷⁰⁵ The theme of silence also emerged in the interviews of this study. Informants highlight, for example, silence on occasions where there are many relatives present. In such situations, on informant noted that hetero-cis-persons are asked about their private life or their partners, but LGBTIQ people are not asked such questions. Based on the interviews conducted in the survey, the silence in the community seems to be affected, *inter alia*, by the complexity and the unfamiliarity of the matter. The informant who finds that the issue has been difficult for relatives, for example, finds that an underlying reason is also the religiousness of the Sámi community,

⁷⁰² Lehtola, Veli-Pekka, *Saamelaiskiista. Sortaako Suomi alkuperäiskansaansa?*, Helsinki: Into-kustannus, (2015), 223-230. See also Mattanen (2016), p. 28 & 36.

⁷⁰³ See generally about the effects of colonialism e.g. Kuokkanen, Rauna, *Mitä on saamelaisten hyvinvointi? Tarkastelua kansainvälisessä alkuperäiskansojen kontekstissa*. SámiSoster Association 10 year anniversary seminar, Inari 21.4.2008, p. 7. Available at: <https://rauna.files.wordpress.com/2008/04/samisostersuomi.pdf>; Kuokkanen, Rauna, "Saamelaiset ja kolonialismin vaikutukset nykypäivänä". In Kuortti, Joel, Lehtonen, Mikko & Löytty, Olli (eds.), *Kolonialismin jäljet: keskustat, periferiat ja Suomi*, Helsinki: Gaudeamus, (2007), p. 148; Mattanen (2016), p. 28-34.

⁷⁰⁴ See also e.g. Mattanen (2016), p. 36; Rasmus, Minna, *Bággu vuoligit, bággu birget – Sámemánáid ceavzinstrategiijat Suoma álbmotskuvlla ásodagain 1950–1960-loguin*, Oulun yliopisto: Giellagas- instituutti (2008).

⁷⁰⁵ Mattanen (2016), p. 37-38. See also Løvold (2014), p. 39-51.

and especially of their own family. In their Master's thesis, Mattanen (2016) also introduces the influence of Christianity, and especially laestadianism, on the Sámi's attitude towards sexual and gender minorities⁷⁰⁶. Another informant also ponders that silence could be at least partly due to the effects of laestadianism. On the other hand, the informant also questions whether such silence is a phenomenon only in the Sámi community, or whether it is also present in other, e.g. Finnish communities. As has been pointed out earlier, silence may also be due to the preservation of family honor.

The interviews also reveal the informants' own silence about their identity as a sexual and/or gender minority. One informant expressed that they found it very difficult to talk about their own sexual orientation within the Sámi community, especially in the beginning. Another informant also points out that, especially when interacting with older people, they have either been cautious to discuss, or completely avoided discussing their sexual orientation. Both informants also report that their own silence on the subject has in some cases been influenced by their own assumptions regarding others' acceptance of their sexual orientation, and sometimes they have been positively surprised by the reactions they receive upon revealing this information. In an interview, one informant mentioned that some of their family members wish that they would be silent about their sexual orientation. In another interview, an informant discussed that they do not always want to reveal their own sexual and gender identity because they feel that disclosing it would negatively affect their ability to work in traditional Sámi livelihoods, for example. They feel that the role of men in the traditional livelihoods is stronger than that of women, and without a male partner, they would not be able to practice traditional livelihoods full-time. In this interview, many things about the situation in the Sámi community were centred around the position of women in the Sámi community. The informant also reflected on the effects of Western culture and society's values on the gender roles in the Sámi community. According to the informant, it should be considered how, for example, the roles of Sámi women and men have changed in the community because of the proliferation of the dominant national culture. The same questions, as well as the implications of Christianity on the position of women in Sámi communities have also been discussed in Kuokkanen (2008), in an article that

⁷⁰⁶ Mattanen (2016), p. 38-48.

examines the effects of Christianity on the development of certain gender hierarchies in indigenous societies⁷⁰⁷.

Løvold's (2014) Master's thesis also indicates the silence of the people in the margin (silence in the margin), as one type of silence in the Sámi community. According to Løvold, silence may emerge out of the desire not to violate the internal norms of the community and the fear that people would face silence as a consequence of doing so. As has been pointed out earlier, silence in the Sámi community may also mean that the matter is not accepted, and Løvold defines silence also as an internal sanction in the community.⁷⁰⁸

Throughout the study, the silence of Sámi men identifying as a sexual and/or gender minority in Finland was particularly striking. In spite of many attempts, we did not receive input from any Sámi male-identifying informants residing in Finland and belonging to a sexual and/or gender minority. Of course, this does not mean that they do not exist. Other informants informed the researchers that they had asked male-identifying persons among their acquaintances to participate in our research, but despite this, could not find anyone who was willing to participate. We also asked in the interviews *whether the informants felt that a group within the sexual or gender minorities was particularly stigmatised, and how did that show?* Three of the five informants mentioned gay Sámi males as such a group. Their situation is particularly difficult due to the patriarchy and masculinity of modern Sámi culture. There are high expectations for boys and men in the Sámi culture, for example, to continue traditional livelihoods, which places a big cultural burden on them. In another interview, gay males were not named as a particularly stigmatised group, but the informants felt that gay males were cautious and reserved about discussing the matter publicly.

⁷⁰⁷ Kuokkanen, Rauna, "Sámenissonat, «árbevierru» ja veahkaválddi hámit", Sámi dieđalaš áigečála 1(2008), p. 37.

⁷⁰⁸ Løvold (2014), p. 47-51.

Queering Sámi - indigenous stories beyond the norm (2014),⁷⁰⁹ includes stories of Sámi men identifying as a sexual or gender minority, yet only one account is included from a person living in Finland. Unlike the men living in Norway or Sweden, the person residing in Finland remains anonymous in the book.⁷¹⁰ He pays particular attention to the circumstances of his participation at the end of his story, in which he reveals that he had originally planned to appear in the book with his own name and his pictures. He says that just before the book was sent to the printers, five of his close friends had said that they would cut all contact with him if he appeared in the book under his own name.⁷¹¹ Based on this, it can also be said that silence surrounding Sámi sexual and gender minorities seems to be rather profound in Sámi communities. On the other hand, the question arises as to whether the situation of a Sámi man belonging to a sexual or gender minority living in Finland is particularly difficult compared with Sweden or Norway, for example. The Sámi are considered a unified nation in four states, but as discussed in an interview and in one of the workshops⁷¹², gay Sámi males living in Finland are very cautious about publicly revealing their own sexual identity. In addition, most of the informants reported that they did not know any gay Sámi men living in Finland, and in the light of the above-mentioned example in *Queering Sápmi*, it would appear that the subject is a taboo among the Sámi living in Finland. The researchers wonder whether this observation may be signifying the presence of essential norms of Finnish society and culture as well, and how they are reflected within the views of the Sámi living on the Finnish side, for example, regarding gender.

Mattanen (2016) and Løvold (2014) also write about the Sámi' ideal of masculinity⁷¹³ and the macho culture associated with reindeer husbandry.⁷¹⁴ Both studies emphasize that the masculine, macho ideal is especially linked to

⁷⁰⁹ This is the same book *Queering Sápmi –saamelaisia kertomuksia normien ulkopuolelta*, analysed by Mattanen (2016), but in this research, we decided to use the English version of the book.

⁷¹⁰ Bergman & Lindquist (2014).

⁷¹¹ Bergman & Lindquist (2014).

⁷¹² Workshop in Sajos in Inari 3.5.2017.

⁷¹³ Løvold (2014), p. 53-56.

⁷¹⁴ Mattanen (2016), p. 48-53.

reindeer herding⁷¹⁵, and Mattanen, for example, reveals that in the analysis of the personal interviews in the Queering Sápmi project, the Sámi man is usually presented as a reindeer herder⁷¹⁶. Additionally, in the Fafo report, reindeer husbandry was highlighted as a factor maintaining gender segregation in Sámi culture. Although there is a clear difference between the views of people living in the south and in the north, women and men are faced with certain expectations among the Sámi who live elsewhere as well.⁷¹⁷

Transgender people are another silent minority group among Sámi identifying as a sexual and/or gender minority living in Finland. All of the interviewees we interviewed mentioned transgender persons as a particularly stigmatized minority group. During one of the workshops we organised, the difficult position of transgender persons in the Sámi community and more widely in the society was discussed.⁷¹⁸ In the Sámi community, a person identifying as a transgender sometimes have to face strong reactions, and according to an informant, it may, in the worst case, mark the total collapse of the person's status in the community. Some of the informants also say that transgender people are simply not talked about in the Sámi community, and are regarded as strange. One informant points out that there is not much awareness about transgender people in the Finnish society in general, and another one specifically points out that they are the ones that need support now. One informant says that living as a trans woman would be the most radical thing one could do in the Sámi community, because it challenges established norms about gender status in the community. They feel that a person born as a man would somehow give up their own normative status in the community. Throughout the interview, the role of women and their position in the Sámi community is strongly linked to these discussions. In one account of a transgender person presented in *Queering Sápmi – Indigenous stories beyond the norm* (2014) they discuss the challenges they faced in the Sámi community and that it was impossible to truly be themselves before moving away from their place of origin⁷¹⁹.

⁷¹⁵ Mattanen (2016), p. 48-53; Løvold (2014), p.55.

⁷¹⁶ Mattanen (2016), p. 49.

⁷¹⁷ Grønningsæter & Nuland (2009), p. 63-64.

⁷¹⁸ Workshop in Inari in Hotel Kultahovi 17.8.2017.

⁷¹⁹ Bergman & Lindquist (2014), p. 85-97.

6.4. On the position of sexual and gender minorities in Finland's human rights policies in general

Finland's first Human Rights Report established the human rights of persons belonging to sexual and gender minorities as one of the focal points of Finland's international human rights policy.⁷²⁰ They have since been raised in a subsequent human rights report⁷²¹, and repeatedly discussed in the government human rights reports since 2004⁷²². The Human Rights Report issued by the government in 2014 contained several policy definitions concerning equality and non-discrimination. It raised the rights of the groups at risk of discrimination and the elimination of multiple discrimination as one of the priorities of Finland's international human rights policy.⁷²³ According to the report, the fundamental and human rights of sexual and gender minorities should be promoted by drawing up a national strategy or action plan for them.⁷²⁴

In addition, Finland's most recent Human Rights Strategy and the Human Rights Action Plan of the Foreign Service of Finland 2013-2015 emphasize the

⁷²⁰ Tarjamo, Kerttu, Selvitystyö ulkoasiainministeriön toiminnasta LHBTI-ihmisoikeuksien edistämiseksi. 22.12.2012, p. 7; Ministry for Foreign Affairs of Finland, Ulkoasiainministeri Tarja Halosen eduskunnan ulkoasiainvaliokunnalle antama selonteko Suomen hallituksen ihmisoikeuspolitiikasta 11.11.1998.

⁷²¹ Ministry for Foreign Affairs of Finland, Ihmisoikeudet ja Suomen ulkopoliitiikka, Ulkoasiainministeri Erkki Tuomiojan eduskunnan ulkoasiainvaliokunnalle antama selvitys Suomen hallituksen ihmisoikeuspolitiikasta 29.11.2000, Ulkoasiainministeriön julkaisuja, Helsinki.

⁷²² Valtioneuvoston selonteko Suomen ihmisoikeuspolitiikasta, Helsinki: Edita Prima Oy, (2004), 103. Available at: <http://www.formin.fi/public/download.aspx?ID=69315&GUID={A4EDB3C3-1FF2-4C68-90D8-2B937828D80C}>; Valtioneuvoston selonteko Suomen ihmisoikeuspolitiikasta, (2009). p. 30-32. Available at:

<http://www.formin.fi/public/download.aspx?ID=69310&GUID={0AFC392E-12BD-41C4-927C-257A392DB382}>; Ministry for Foreign Affairs of Finland, Valtioneuvoston ihmisoikeusselonteko 2014, Ulkoasiainministeriö, Jyväskylä: Grano Oy, (2014), p. 68-69. Available at:

<http://formin.finland.fi/public/download.aspx?ID=136941&GUID=%7b7E6D44FB-6F31-4BFA-A521-F5CCAC509B24%7d>.

⁷²³ Ministry for Foreign Affairs of Finland, Valtioneuvoston ihmisoikeusselonteko 2014, p. 23-26.

⁷²⁴ Ministry for Foreign Affairs of Finland, Valtioneuvoston ihmisoikeusselonteko 2014, p. 71.

eradication of discrimination against sexual and gender minorities as one of the key objectives.⁷²⁵ The new national Action Plan for Fundamental and Human Rights emphasizes the strengthening of self-determination of gender minorities especially in social and health services, and as a part of the right to physical integrity and personal liberty. The plan also launches an investigation into the rights and experiences of intersex children.⁷²⁶

In 2012, the Ministry of Foreign Affairs prepared a study on their activities regarding the promotion of human rights of persons belonging to sexual and gender minorities. The Ministry of Foreign Affairs' work on the human rights of sexual and gender minorities has been mainly in advocacy work in international fora.⁷²⁷ According to the report, the ministry has sought to include and elevate the rights of sexual and gender minorities within the agendas of international organisations by including it in its own presentations, organising LGBTIQ-themed side events in co-operation with other countries, influencing the EU's positions and seeking to include the human rights of sexual and gender minorities in resolutions and decisions. Attention to LGBTIQ human rights situations has been included within the United Nations UPR proceedings (Universal Periodic Review). The Ministry for Foreign Affairs has also been active in promoting LGBTIQ human rights in the Council of Europe.⁷²⁸

In 2014, the Ministry of Justice issued a report on the fundamental and human rights of sexual and gender minorities in Finland. The report assesses how

⁷²⁵ Ministry for Foreign Affairs of Finland, Suomen ulkoasiainhallinnon ihmisoikeusstrategia, Ulkoasiainministeriö, Jyväskylä: Kopijyvä Oy, (2013), p. 20. Available at: <http://formin.finland.fi/public/download.aspx?ID=115729&GUID={DD6BF865-D308-4C5B-B7F7-959D0AD65DD0}>; Ministry for Foreign Affairs of Finland, Suomen ulkoasiainhallinnon ihmisoikeuspoliittinen toimintaohjelma 2013 – 2015, Ulkoasiainministeriö, Joensuu: Kopijyvä Oy, (2013), p. 13-14. Available at: <http://formin.finland.fi/public/download.aspx?ID=116041&GUID={D0D4D53A-778C-4BBF-A808-D57DB8F206E4}>

⁷²⁶ Ministry of Justice, Kansallinen perus- ja ihmisoikeustoimintaohjelma 2017-2019, Oikeusministeriön julkaisu 9/2017. Oikeusministeriö, Helsinki, 2017.

⁷²⁷ Tarjamo, Kerttu, 22.12.2012, Selvitystyö ulkoasiainministeriön toiminnasta LHBTI-ihmisoikeuksien edistämiseksi. Available at: <http://formin.finland.fi/public/download.aspx?ID=109225&GUID=%7BDF3A3E60-DE16-45B6-A7A6-4FDDC23C5C01%7D>.

⁷²⁸ Ibid., p. 2.

fundamental and human rights were implemented in the different aspects of life of persons belonging to sexual and gender minorities in 2014, and how the situation should be developed in the future.⁷²⁹ It is clear from the report that there is still a lot of work to be done in Finland, including in the development of legislation and in improving the effectiveness of anti-discrimination efforts, so that the fundamental and human rights of sexual and gender minorities are realised in an equal manner in society. Discrimination was reported to be common in both workplaces and educational establishments, and up to 70% of LGBTIQ youth were declared to have experienced harassment and discrimination. Existing problems are also not always reported. There were also gaps in existing legal remedies. Discrimination, negative attitudes, and the invisibility of the members of this minority have a direct and indirect impact on the physical and mental health of the individuals.⁷³⁰ Legislative shortcomings can be found, for example, in the implementation of fundamental and human rights in the area of family law and in the transgender act, particularly with regard to the realisation of the right of self-determination.⁷³¹ The report also recommends a national strategy or operational program to support the full realisation of fundamental and human rights of sexual and gender minorities.⁷³²

In the ILGA-Europe (International Lesbian, Gay, Bisexual, Trans and Intersex Association)⁷³³ comparative study of the implementation of the human rights of sexual and gender minorities, Finland ranked seventh⁷³⁴, among the 49 European states and is reported to implement 68 % of the human rights of those

⁷²⁹ Ministry of Justice, Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa, Oikeusministeriö, Selvityksiä ja ohjeita, Helsinki: Oikeusministeriö 34/2014.

Available at:

https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76543/omso_34_2014seksuaalivahemmistot.pdf?sequence=1.

⁷³⁰ Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa (2014), p. 22-25 & 28-31.

⁷³¹ Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa (2014), p. 25.

⁷³² Ibid., p. 31.

⁷³³ ILGA- Europe is an international NGO that is an umbrella organisation for 490 organisations in 45 European countries (ILGA Europe, What is ILGA-Europe. Available at: <https://www.ilga-europe.org/who-we-are/what-ilga-europe>).

⁷³⁴ ILGA –Europe, Rainbow Europe, Country Ranking. Available at: <https://rainbow-europe.org/country-ranking>.

minorities⁷³⁵. The UPR working group under the UN Human Rights Council in its session in Geneva on May 1-12, 2017 issued recommendations to Finland on the implementation of human rights obligations and recommendations. The recommendations highlighted, inter alia, the rights of sexual and gender minorities already noted in previous UPR reports.⁷³⁶ With regard to the recommendations, Finland acknowledged that it accepts the recommendation on eliminating and preventing discrimination against sexual and gender minorities, but did not accept, but was advised of the recommendation concerning the amendment required to the section on sterilization in the Trans Act⁷³⁷. Finland has announced that it will partially accept a recommendation regarding the interests of intersex children.⁷³⁸ It is regrettable that Finland did not accept the recommendations on amending the Trans Act concerning sterilization. The parliamentary Human Rights Centre also gave its opinion for the amendment of the Trans Act, encouraging the government to eliminate reproductive inability from the conditions of legal recognition of gender, when the final report for the Universal Periodic Review (UPR) was adopted in the UN Human Rights Council session in Geneva on September 21, 2017.⁷³⁹ This is the subject of legislative motion LA 43/2016 that is pending and expecting the support of the majority of members of the Social Affairs and Health Committee.

⁷³⁵ ILGA –Europe, Rainbow Europe, Finland according to ILGA-Europe. Available at: <https://rainbow-europe.org/#8632/0/0>.

⁷³⁶ UPR, Report of the Working Group on the Universal Periodic Review, Finland, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 25.8.2017. Available at: <http://formin.fi/public/download.aspx?ID=170493&GUID={B14A0CE7-D760-4EC2-A68E-369230C5AF71}>. See also UPR, Universal Periodic Review by the United Nations Human Rights Council, Report by Finland, 2/2008. Available at: <http://formin.finland.fi/Public/download.aspx?ID=28054&GUID=%7BC2053F55-97A5-45D6-9EAB-20DDB4179151%7D>; Universal periodic review of the United Nations Human Rights Council, Second national report by the government of Finland, 2/2012. Available at: <http://www.formin.fi/public/download.aspx?ID=91784&GUID={D14BB7E0-D02A-4A67-91C3-55C5A0126390}>.

⁷³⁷ 563/2002, section 1, subsection 1.

⁷³⁸ URP (2017), p. 6.

⁷³⁹ Adoption of Universal Periodic Report Outcome of Finland 36th Session Human Rights Council 21 September 2017, IOK (Human Rights Centre), 49/2017.

Thus, Finland emphasizes the importance of the implementation of the human rights of sexual and gender minorities and the elimination of discrimination against such minorities in both its national and international human rights policies, and this can also be seen in the field of international politics, for example, in the policies and activities of actors such as the UN and the EU⁷⁴⁰. This supports and strengthens Finland's emphasis on these rights, but at the same time obliges Finland to further strengthen the implementation of the goals of its own international human rights policy both at the national level and in international cooperation. The biggest challenge is for Finland to reflect the need for amendments to the Trans Act, as discussed in a later chapter.

There is no previous research in Finland into the rights of Sámi persons belonging to sexual and gender minorities, and no reference to their rights or status in political documents concerning sexual and gender minorities. Members of minorities within a minority may, however, be in a vulnerable position and face multiple discrimination, and this should also be taken into consideration when Finland promotes the rights and status of sexual and gender minorities. One of the main issues concerning Sámi persons identifying as a sexual and/or gender minority are the availability of culturally sensitive social and health care services in the Sámi languages.

6.5. On the human rights of sexual and gender minorities

There are no separate human rights instruments for sexual and gender minorities. Although the general human rights protection of all human beings naturally applies to LGBTIQ people, these rights are not implemented in practice, because of existing attitudes and structural factors, and the lack of correct information. The implementation of the human rights of sexual and gender minorities has received widespread attention only rather late. Indigenous sexual and gender minorities have also not received extensive attention at the UN level as a separate group in the same way that, for example, indigenous people with disabilities have.

⁷⁴⁰ See e.g. pages 185-188 of this report.

In 2008, during the United Nations General Assembly, a statement was adopted stating that human rights should be safeguarded regardless of sexual orientation or gender identity.⁷⁴¹ In 2011, the UN Human Rights Council adopted the first resolution on the human rights of sexual and gender minorities. In the Resolution, the Human Rights Council acknowledges the equality of all people. It also asks the UN High Commissioner for Human Rights to draft a report on discriminatory legal provisions and practices, as well as on the violence that members of sexual and gender minorities face around the world because of their identities, on the ways human rights can be used to eradicate violence and human rights violations concerning those minorities.⁷⁴² The Office of the United Nations High Commissioner for Human Rights published its report in the same year. The report states that discrimination, violence, and human rights abuses against sexual and gender minorities are extensive. Referring to several UN human rights conventions and documents, the Office of the High Commissioner for Human Rights stresses that all people, including lesbian, gay, bisexual and transgender persons, are entitled to enjoy human rights such as the right to life, security and privacy, the right to be free from torture, the right to be free from discrimination, and the right to freedom of expression, assembly and association.⁷⁴³

Earlier, in 2007, a large group of experts drafted the Yogyakarta principles⁷⁴⁴ concerning the interpretation of the obligations of human rights treaties on key issues for LGBTIQ persons. The principles have since been widely accepted by states and the United Nations. Finland's goal is to have the Yogyakarta principles adopted as a starting point for international human rights policy.⁷⁴⁵ The

⁷⁴¹ Joint statement on sexual orientation, gender identity and human rights at United Nations, 2008. <http://arc-international.net/global-advocacy/sogi-statements/2008-joint-statement/>.

⁷⁴² Resolution adopted by the Human Rights Council, 17/19 Human rights, sexual orientation and gender identity, 14.7.2011, A/HRC/RES/17/19. See also Resolution 2014: Human Rights, sexual orientation and gender identity, A/HRC/RES/27/32; and Resolution 2016: Protection against violence and discrimination based on sexual orientation and gender identity (adopted 30 June 2016) - A/HRC/RES/32/2.

⁷⁴³ Ibid. Para 5, p. 4.

⁷⁴⁴ The Yogyakarta Principles, Principles of the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007, http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf; Yogyakartaan periaatteet suomeksi: http://www.finnqueer.net/juttu.cgi?s=312_5_1.

⁷⁴⁵ Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa, Selvityksiä ja ohjeita 34/2014, Oikeusministeriö, p. 14.

document contains 29 principles on key human rights and their equal and full application for LGBTIQ persons. Under principle 2, “everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.”⁷⁴⁶ The principles do not make a separate mention of ethnicity, but it can be seen as naturally belonging to this category, so the Yogyakarta principles also obligate states to take steps to protect members of sexual or gender minorities who belong to indigenous peoples against discrimination on multiple grounds.

The Yogyakarta principles make it clear from existing human rights treaties that universal human rights are common to all of the people in the world, including sexual and gender minorities. Thus, the purpose of the principles is to guarantee the human dignity of LGBTIQ people without any room for political interpretation.⁷⁴⁷

Although human rights treaties do not generally mention sexual orientation or gender identity as prohibited grounds of discrimination, the Council of Europe Convention on preventing and combating violence against women and domestic

⁷⁴⁶ Yogyakarta principles, principle 2.

⁷⁴⁷ Väisänen, Mikko, *Mitä ovat Yogyakartaan periaatteet?* Finnqueer, http://www.finnqueer.net/juttu.cgi?s=310_5_1. A more thorough analysis of the Yogyakarta Principles, See, O’ Flaherty, Michael, Fisher, John, “Sexual Orientation, Gender Identity and International Human Rights, Contextualizing the Yogyakarta Principles”, *Human Rights Law Review*, Volume 8, Issue 2, 1 January 2008: 207–248.

violence⁷⁴⁸ (Istanbul Convention), drawn up in 2011, explicitly obliges the parties to ensure the implementation of the provisions of the Convention without discriminating anyone on those grounds.⁷⁴⁹ Most universal human rights conventions have been drafted at a time when the human rights of LGBTIQ people had not yet become a key political issue. This explains why these groups are not specifically mentioned in these agreements. However, there has been strong criticism and fear that the existing human rights treaties could be, at worst, used against sexual and gender minorities. Adopting narrow interpretations of the norms or the failing to mention whole groups of people are value judgments that can lead to the dehumanization of these people and to the idea that the dignity of these people does not need to be recognized, and hence that states can discriminate against them without consequence.⁷⁵⁰

Nevertheless, as is clear in the following chapter, the institutions overseeing human rights conventions have considered the rights of sexual and gender minorities and have reaffirmed that the agreements equally protect the rights of persons belonging to the aforementioned groups. In Finland, the requirements of international human rights treaties have consistently been considered to complement and guide the interpretation and application of law.⁷⁵¹ In Finland, the statements of bodies supervising human rights, even if they are not legally binding, are also taken into account as guiding factors in the development of legislation.

⁷⁴⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence, in Istanbul 11.5. 2011, entered into force 1.8.2015. The Parliament adopted the Convention on February 25, 2015 and the President of the Republic on April 10, 2015. Government decree on implementation 53/2015.

⁷⁴⁹ Article 4.3.

⁷⁵⁰ Väisänen, Mikko, Mitä ovat Yogyakartaan periaatteet? Finnqueer, http://www.finnqueer.net/juttu.cgi?s=310_5_1.

⁷⁵¹ See generally e.g. Karhu, Juha: Perusoikeudet ja oikeuslähdeoppi. Lakimies, 5/2003, p. 794–798.

6.5.1. Statements of human rights supervisory bodies on the human rights of LGBTIQ people

The UN High Commissioner for Human Rights has defined five core obligations of states with respect to protecting the human rights of sexual and gender minorities. States have the obligation to: 1) protect individuals from homophobic and transphobic violence; 2) prevent torture and cruel, inhuman and degrading treatment of persons belonging to sexual and gender minorities; 3) decriminalize homosexuality; 4) prohibit discrimination based on sexual orientation and gender identity, and 5) safeguard the freedom of assembly and association of sexual and gender minorities.⁷⁵²

In 2011, the UN Human Rights Council carried out a study that shows that sexual and gender minorities are more likely to be victims of violence, which violate their human rights, such as physical integrity.⁷⁵³ In connection with physical integrity, NGOs in Finland have also pointed out shortcomings in legislation or in the actions of the authorities concerning domestic violence, sexual violence and violent hate crimes. For example, sexual minorities have a higher risk of being subjected to violence than others. In the case of hate crimes, possible hate motives are not always identified or investigated.⁷⁵⁴ In the interviews and workshops carried out in this project, no Sámi persons residing in Finland and belonging to a sexual and/or gender minority brought up violations of physical integrity in connection with violent crimes, but a person identifying as a sexual and/or gender minority living in Scandinavia did discuss having been a victim of direct physical violence⁷⁵⁵.

The Human Rights Council has also paid attention to the status and rights of intersex children and considered that cosmetic surgeries for children violate their

⁷⁵² Born Free and Equal. Sexual Orientation and Gender Identity in International Human Rights Law. UN OHCHR. New York, Geneva 2012, p. 9-13.

⁷⁵³ Human Rights Council, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 17 November 2011, A/HRC/19/41 and UN GA A/HRC/22/53.

⁷⁵⁴ Kansallinen perus- ja ihmisoikeustoimintaohjelma 2017-2019, p. 70.

⁷⁵⁵ Workshop in Inari, Kultahovi 17.8.2017.

rights.⁷⁵⁶ The National Program for Fundamental Rights and Human Rights 2017-2019 points out that such procedures may be irreversible and result in infertility. The work program also refers to the National Advisory Board on Social Welfare and Health Care Ethics ETENE. In 2016 ETENE proposed that when treating an intersex child, any measures affecting the external sexual characteristics would be carried out only after the child is able to define their gender and take a stand on their own sexuality.⁷⁵⁷

Human Rights Committee (CCPR), which monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR 1966) and which has also played a key role in the interpretation of the rights of the Sámi, has already taken a position on the issue of discrimination based on sexual orientation in 1994 in *Toonen v. Australia*.⁷⁵⁸ The Committee notes that the term sex in Articles 2 and 26 of the ICCPR also applies to sexual orientation.⁷⁵⁹ Even though neither sexual nor gender orientation is specifically mentioned as discrimination criteria in the ICCPR, they are clearly categorised as discrimination criteria in the CCPR case law. In this case, the Committee also considers that Article 17 has been violated, because the privacy of an individual has been violated with various investigative arrests, because the Tasmanian legislation prohibited homosexuality.⁷⁶⁰

The CCPR has confirmed similar positions in subsequent cases and in its conclusions on country reports.⁷⁶¹ In the conclusions concerning Finland in

⁷⁵⁶ Human Rights Council, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 17 November 2011, A/HRC/19/41 and UN GA A/HRC/22/53 as well as a plea published on the intersex day 26.10.2016 by the UN and many human rights experts against harmful medical procedures. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E.

⁷⁵⁷ Kansallinen perus- ja ihmisoikeustoimintaohjelma 2017-2019, p. 69. See ETENE opinion on the treatment of intersex children 4.4.2016, <http://etene.fi/lausunnot-ja-kannanotot-2016>.

⁷⁵⁸ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

⁷⁵⁹ *Ibid.* Para 8.7.

⁷⁶⁰ *Ibid.* Para 9.

⁷⁶¹ See e.g. *Young v. Australia*, Communication No. 941/2000 (CCPR/C/78/D/941/2000), Para.10.4; *X v. Colombia*, Communication no. 1361/2005 (CCPR/C/89/D/1361/2005), Para. 9;

2013, the Committee expressed its concern that the legislation in force in Finland to combat discrimination based on sexual orientation and gender identity is not exhaustive, and hence the legislation cannot protect against discrimination on all the grounds listed in the Covenant. In addition, the CCPR was concerned about the lack of information on the discriminatory treatment relating to sexual orientation and gender identity (Articles 2 and 26). The Committee notes that Finland should intensify its efforts to combat and prevent discrimination based on sexual orientation and gender identity, inter alia, through the implementation of a comprehensive legislative reform, which guarantees equal protection against discrimination on all grounds.⁷⁶² The legislative reforms occurring since are discussed in a later chapter.

The CESCR, which oversees the International Covenant on Economic, Social and Cultural Rights, has also confirmed that the “other grounds” for discrimination referred to in Article 2 (2) of that Covenant cover sexual orientation and gender identity, and mentions serious human rights violations in these categories, such as harassment in schools and workplaces.⁷⁶³ The Committee also refers to the Yogyakarta principles.⁷⁶⁴ In addition, the UN Committee on the Rights of the Child, the UN Committee against Torture and the Committee on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) have adopted views on the human rights of sexual and gender minorities and the prohibition of discrimination against these minorities.⁷⁶⁵

and Concluding observations on Mexico (CCPR/C/MEX/CO/5), Para. 21, and Uzbekistan (CCPR/C/UZB/CO/3), Para. 22.

⁷⁶² UN Human Rights Committee Concluding Statements for Finland, CCPR/C/FIN/CO/6 24.7.2013 Original version in English, unofficial translation into Finnish by the Ministry for Foreign Affairs Para 8.

⁷⁶³ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20., Para 32.

⁷⁶⁴ *Ibid.*, Footnote 25.

⁷⁶⁵ See Committee on the Rights of the Child, Concluding observations on Chile (CRC/C/CHL/CO/3), Para. 29; See Committee on the Rights of the Child, General comment No. 4 (CRC/GC/2003/4), Para.6; Committee against Torture, General comment No. 2 (CAT/C/GC/2), Para. 21; and Committee on the Elimination of Discrimination against Women,

The CEDAW in its 2014 report on Finland, expressed concern about the forced sterilization of persons who are transgender in seeking legal recognition of their gender. The Committee recommended amending the act on Legal Recognition of the Gender of Transsexuals, to ensure that gender reparation is carried out without requiring transgender persons to conform to stereotypical ideas of masculine or feminine appearance or behavior, and that it does not require individuals to consent to sterilization or prove infertility.⁷⁶⁶ In addition, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has paid attention to this. It calls on all states to repeal legislation allowing irreversible measures, including forced genital normalizing surgeries, forced sterilization, unethical medical experiments, and corrective or conversion therapies when carried out or administered without the free consent of the person concerned.⁷⁶⁷

The Council of Europe Commissioner for Human Rights, in the report concerning Finland in 2012, has also noted that Finland should urgently amend their law, The Recognition of the Gender of Transsexuals, in such a way that the recognition of gender would not require sterilization or infertility due to other reasons.⁷⁶⁸ The Human Rights Commissioner welcomes the fact that sexual orientation as a motive for a crime is explicitly mentioned in the Criminal Code as an aggravating circumstance. The Commissioner does urge Finland, however, to extend the provision to also explicitly mention gender identity. Likewise, the Human Rights Commissioner prompts Finland to ensure the legal status of intersex persons.⁷⁶⁹ In a previous report issued one year earlier, the Council of Europe Commissioner for Human Rights emphasizes also the right of persons belonging to sexual or gender minorities to health and self-determination, as well

General comment No. 28 (CEDAW/C/GC/28), Para. 18. See also Committee on the Elimination of Discrimination against Women, Concluding observations on South Africa (CEDAW/C/ZAF/CO/4), Para. 40; and Costa Rica (CEDAW/C/CRI/CO/5-6), Para. 41.

⁷⁶⁶ Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Finland, 28.2.2014, CEDAW/C/FIN/CO/7, Para 28-29.

⁷⁶⁷ Report of the Special Rapporteur on torture, or other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1. February 2013, A/HRC/22/53, Paras 76-79.

⁷⁶⁸ Report on Finland by the EU Human Rights Commissioner Nils Muižniek 2012 (COMMDH (2012)27).

⁷⁶⁹ Ibid.

as the training of healthcare professionals and the development of know-how for a proper understanding of the needs of those minorities. The Human Rights Commissioner also recommends that Member States promote equality in education and in the workplace for sexual and gender minorities, respect the right of people with a transsexual identity to privacy in job search, and combat the exclusion and discrimination of transsexual people in the workplace.⁷⁷⁰

In the 2012 Eurobarometer,⁷⁷¹ ”*Discrimination in the EU in 2012*”, half of the Finnish respondents found that discrimination based on sexual orientation was common. Discrimination against transgender people was considered common by 51 % of the respondents. 32 % of the respondents assumed that belonging to a sexual or gender minority could be a disadvantage in a recruitment situation with two equal applicants. The numbers are higher than the EU average.⁷⁷²

In 2010, the Council of Europe's Committee of Ministers monitoring the Framework Convention for the Protection of National Minorities issued a Recommendation to Member States on measures to combat discrimination based on sexual orientation or gender identity. The Recommendations call on Member States to review and, if necessary, reform their legislation and to step up their anti-discrimination efforts, gather information and raise awareness among victims of effective legal remedies.⁷⁷³ The recommendations concern a number of areas of life, including health care, working life, education and participation rights. The Finnish response emphasizes legislative reforms, for example in the case of the Non-discrimination Act and the Equality Act, discussed separately in a later chapter.⁷⁷⁴ Finland found its own actions inadequate to communicate the

⁷⁷⁰ Council of Europe, *Discrimination on grounds of sexual orientation and gender identity*, in Europe, second edition, Council of Europe, September 2011, p. 7-15.

⁷⁷¹ Over 1000 Finns were interviewed for the Eurobarometer, in EU over 26 000 persons. See *Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa*, Selvityksiä ja ohjeita 34/2014, Oikeusministeriö, p. 22, footnote 16.

⁷⁷² Ibid.

⁷⁷³ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity., https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a.

⁷⁷⁴ Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec (2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, Finland's answers.

legal remedies to the victims of discrimination, to lower the reporting threshold for hate crimes resulting from sexual orientation and gender identity, to ensure the safety of prisoners of sexual and gender minorities, and to include information on sexual orientation and gender identity in school curricula. Finland also found its actions insufficient concerning the mandate for national human rights bodies and the prohibition of multiple discrimination.⁷⁷⁵ A working group appointed by the Ministry for Foreign Affairs based on recommendations drafted the response. The response written by registered associations Seta and Trasek describes the need for a more extensive and comprehensive LGBTIQ policy and for new, concrete measures in order to eradicate discrimination.⁷⁷⁶ The interviews and workshops⁷⁷⁷ carried out during this research also raised issues, for example, regarding the need to better integrate information on sexual and gender minorities into the curriculum of schools. In addition, when we asked the informants whether they are aware of their human rights as Sámi people belonging to a sexual and/or gender minority, most informants said they know at least something about their rights as Sámi, but they knew little about the rights of sexual and gender minorities. One informant also pondered who would be responsible for raising public awareness of the rights of citizens in general, and wondered if it would be possible to include a course on human rights for example, for all people teaching at primary schools, or at the secondary level at the latest. The informant also stressed that the situation of a person belonging to a minority group is different per se, insofar as those human rights whose implementation is almost self-evident to a cis-heterosexual in the majority population, are not necessarily automatic for Sámi persons belonging to sexual and gender minorities. For this reason, these persons need to be very aware of their human rights in order to be able to enforce them.

file:///C:/Users/lheinama/Downloads/CoE%20CM_Rec(2010)5%20implementation%20Finland%20final%2030.1.2013.pdf

⁷⁷⁵ Ibid., See Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa, Selvityksiä ja ohjeita 34/2014, Oikeusministeriö, p. 19.

⁷⁷⁶ NGO Statement on the Implementation of the Recommendation in Finland. Seta ry. Trasek ry.

⁷⁷⁷ Workshops in Inari, in Sajos 3.5.2017 and Hotel Kultahovi 17.8.2017.

The Council of Europe Parliamentary Assembly (PACE) adopted a resolution on April 22, 2015⁷⁷⁸, in which it recommended member states to introduce a rapid, transparent and achievable procedure to recognise a juridical gender, without any requirements regarding age, for example.⁷⁷⁹ The Assembly also encouraged the Member States to remove medical preconditions to recognizing legal gender, such as infertility and a mental health diagnosis⁷⁸⁰, as well as the requirement of unmarried status.⁷⁸¹

The European Court of Human Rights (ECHR), which oversees the European Convention on Human Rights, has issued several judgments regarding the legal status of sexual and gender minorities. Cases have been decided concerning, inter alia, article 3 of the Convention (prohibition of torture), article 5 (right to liberty and security), article 8 (right to respect for private and family life), article 11 (freedom of assembly and association), article 12 (right to marriage) and article 14 (non-discrimination).⁷⁸² They have addressed issues such as social security, marriage and registered partnerships, right to adoption and issues concerning legislation that prohibits homosexuality, or puts LGBTIQ people in a

⁷⁷⁸ Parliamentary Assembly, Resolution 2048/2015, Discrimination against transgender people in Europe, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>.

⁷⁷⁹ *Ibid.*, 6.2.1.

⁷⁸⁰ *Ibid.*, 6.2.2.

⁷⁸¹ *Ibid.*, 6.2.3.

⁷⁸² See e.g. *Y.Y. v. Turkey*, application no. 14793/08; *Identoba and Others v. Georgia* (application no. 73235/12); *M.C. and C.A. v. Romania* (application no. 12060/12); *O.M. v. Hungary* (no. 9912/15); *E.B. v. France* (application no. 43546/02); *X and Others v. Austria* (application no. 19010/07); *M.C. and C.A. v. Romania* (application no. 12060/12); See a more extensive analysis on the rights of sexual and gender minorities at the European Court of Human Rights. Edel, Frédéric, Case law of the European Court of Human Rights relating to discrimination on grounds of sexual orientation or gender identity (2015), Council of Europe. See generally, Johnson, Paul, James, “The choice of wording must be regarded as deliberate: same-sex marriage and Article 12 of the European Convention on Human Rights”, *European Law Review*, Issue 1, vol 40, 2015: 207-244; Johnson, Paul, Homosexuality and the European Court of Human Rights, Routledge 2013; Helfer, Laurence, R. & Voeten, Erik.,” International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe”, *International Organization*, Volume 68, Issue, 1., January 2014: 77-110.

discriminatory position.⁷⁸³ In a recent decision, *A.P. Garçon and Nicot v. France* (2017), the ECHR ruled that requiring infertility as a condition for juridical recognition of gender is a violation of human rights. In that particular case, the Court found that France violated Article 8 of the European Convention on Human Rights on respect for private and family life by requiring the transgender people to present proof of incapacity to reproduce, before their gender can be legally confirmed.⁷⁸⁴ The case also imposes a legal obligation on Finland to amend the Transgender Act, in relation to requirements to prove their incapacity to reproduce, to comply with the human rights obligations of the European Convention on Human Rights. The reform of the transgender legislation will be discussed in a later chapter.

The European Union (EU) law and the European Convention on Human Rights are closely linked. The Court of Justice of the European Union (CJEU) relies on the European Convention on Human Rights in determining the scope of the protection of human rights under European Union law.⁷⁸⁵ The rights of persons belonging to sexual and gender minorities are incorporated into European Union law. Article 21 of the Charter of Fundamental Rights of the European Union expressly prohibits discrimination on grounds of sexual orientation.⁷⁸⁶ The CJEU has issued rulings on the rights of sexual and gender minorities. In Case *A, B, C v Staatssecretaris van Veiligheid en Justitie*, the Grand Chamber of the CJEU

⁷⁸³ See Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa, Selvityksiä ja ohjeita 34/2014, Oikeusministeriö, p. 15.

⁷⁸⁴ European Court of Human Rights, Requetes nos 79885/12, 52471/13 et 52596/13, ECHR 121 (2017) 06.04.2017. [https://hudoc.echr.coe.int/eng#{"itemid":\["001-172556"\]}](https://hudoc.echr.coe.int/eng#{) As stated by Pauli Rautiainen, the decision does not allow margin of appreciation for the states, but means that they need to change trans-legislation in relation to the requirement for incapacity to reproduce. See, Rautiainen, Pauli, Vaatimus lisääntymiskyvyttömyydestä loukkaa transihmisten oikeuksia, perustuslakiblogi, 30.8.2017

<https://perustuslakiblogi.wordpress.com/2017/08/30/pauli-rautiaisen-vaatimus-lisaantymiskyvyttömyydesta-loukkaa-transihmisten-oikeuksia/>. See, also, maailma.net, Kansainvälinen paine Suomean kohtaan kasvaa: translaki uudistettava. Saatavissa: <http://www.maailma.net/nakokulmat/kansainvalinen-paine-suomea-kohtaan-kasvaa-translaki-uudistettava>.

⁷⁸⁵ Turvapaikkaa, rajoja ja maahanmuuttoa koskevan Eurooppaoikeuden käsikirja, EU Agency for Fundamental Rights, 2014 Council of Europe, 2014, p. 20.

⁷⁸⁶ EU Charter on Fundamental Rights (2000/C 364/01). Specific mentions of prohibited grounds of discrimination are included in several directives in the different sectors of the activities of the Union. The Agency for Fundamental Rights monitors the implementation of the rights of persons belonging to sexual and gender minorities.

ruled that the sexual orientation of an asylum seeker should not be assessed through sexual stereotypes, and that it is against fundamental and human rights to require a person to prove non-heterosexuality through their behaviour in public.⁷⁸⁷

In 2013, Finland participated in a petition by 15 ministers from the EU Member States, calling on the EU Commission to create a coherent policy for the EU to safeguard the fundamental rights of lesbian, gay, bisexual and transgender people and to combat discrimination in the EU Member States.⁷⁸⁸ Finland was also involved in making guidelines for the rights of people belonging to sexual and gender minorities in the EU for use of the Foreign Services.⁷⁸⁹ The Foreign Affairs Council approved the guidelines in the summer of 2013.⁷⁹⁰

Member of the European Parliament Miapetra Kumpula-Natri submitted a written question to the European Commission in April concerning forced sterilization as a condition for the recognition of juridical gender. In the reply, the European Commissioner for Justice Věra Jourová notes that discrimination, intolerance or violence based on any form of gender identity or gender properties is contrary to EU fundamental values. According to the EU Court of Justice, the principle of gender equality also applies to discrimination based on gender reassignment. Jourová also points out that although the Commission has no competence to intervene in national legislation regarding transgender people, it

⁷⁸⁷ Judgment in Joined Cases C-148/13 to C-150/13 A, B, C v Staatssecretaris van Veiligheid en Justitie, Court of Justice of the European Union PRESS RELEASE No 162/14 Luxembourg, 2 December 2014, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140162en.pdf>. See an analysis from the human rights point of view, Rautiainen, Pauli, Tasa-arvoinen avioliittolaki ei ratkaissut kaikkia seksuaalivähemmistöjen ihmisoikeusongelmia, perustuslakiblogi, 16.12.2014, <https://perustuslakiblogi.wordpress.com/2014/12/16/pauli-rautiainen-tasa-arvoinen-avioliittolaki-ei-ratkaissut-kaikkia-seksuaalivahemmistojen-ihmisoikeusongelmia/>.

⁷⁸⁸ Press release of the Ministry of Justice:

<http://oikeusministerio.fi/fi/index/ajankohtaista/tiedotteet/2013/05/eulletoivotaanstrategiaaseksuaalijasukupuolivahemmistojenoikeuksienturvaamiseksi.html>.

⁷⁸⁹ Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (lgbti) persons, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137584.pdf.

⁷⁹⁰ Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa, Selvityksiä ja ohjeita 34/2014, Oikeusministeriö, p. 15.

is the responsibility of the Member States and their national courts to ensure that national law is interpreted and applied in compliance with the fundamental rights obligations.⁷⁹¹

6.6. On the implementation and challenges of the human rights of LGBTIQ people in Finnish legislation

As stated in the previous chapter on minorities within the Sámi minority, the equality provision in Article 6 of the Constitution applies equally to persons belonging to sexual and gender minorities, even though they are not specifically mentioned as a group concerned by the non-discrimination provision, in the same way as persons with disabilities. In many norms prohibiting discrimination, the list is open, so even non-listed discrimination criteria can be considered prohibited grounds of discrimination.⁷⁹² The listing in Section 6 of the Constitution is open and prohibits discrimination based on any “other reason that concerns the person”. It can be said that today the idea of equality of all people matters in the concepts of fundamental and human rights.⁷⁹³ While the Constitution does not recognise the concept of multiple discrimination, in the implementation of fundamental rights it must be taken into account that, for Sámi persons belonging to sexual and gender minorities, the equality provision imposes a positive obligation to take action to implement both the rights of the Sámi and the rights of LGBTIQ persons. Concerning the Sámi, the equality provision must be read together with Section 17, paragraph 3, which means for example an obligation to fulfil language rights when providing health services for Sámi LGBTIQ persons.

⁷⁹¹ <http://trasek.fi/2017/06/30/euroopan-komission-kannanotto-lisaantymiskyvyttömyysvaatimuksesta-luovuttava-sukupuolen-juridisen-vahvistamisen-ehdona/>.

⁷⁹² Pentikäinen, Merja: Ihmisoikeudet - kehityksestä, merkityksestä ja haasteista; ihmisoikeuskulttuurin ohuudesta Suomessa, in Tatu Hyttinen and Katja Weckström (eds.): Turun yliopiston oikeustieteellinen tiedekunta 50 vuotta. Turun yliopisto, oikeustieteellinen tiedekunta, Turku, 2011, p. 502.

⁷⁹³ Ojanen, Tuomas and Scheinin, Martin: Yhdenvertaisuus ja syrjinnän kielto (PL 6 §), in Karapuu, Ojanen, Scheinin, Tuori, Viljanen, Hallberg, Perusoikeudet, p. 227- 280. Sanoma Pro, Helsinki, 2011, p. 227

As we have pointed out in the previous chapters on the Sámi and especially Sámi persons with disabilities, formal equality is not always enough to ensure effective equality. There may be discriminatory structures in the society resulting from legislation or traditions that prevent individuals who are formally in an equal position from reaching effective equality. The aspiration to effective equality includes the idea of removing structures that maintain inequalities, and unlike formal equality, emphasizes the differences that need to be taken into account.⁷⁹⁴ For example, in the case of Sámi persons belonging to a sexual and/or gender minority, the factors that create inequalities, relating to language, culture and livelihoods included in it, and differences in treatment due to their belonging to sexual and gender minorities, must be taken into account. Positive special treatment is therefore necessary and acceptable to safeguard the interests of persons in a vulnerable position.⁷⁹⁵

As we already noted in the previous chapter, section 22 of the Constitution imposes on public authorities the obligation to ensure equality as well as all other fundamental rights. According to the related government bill, the provision obliges the state to ensure the effective realisation of fundamental rights, including through necessary active measures such as amending the law.⁷⁹⁶ Sections 6 and 22 of the Constitution can be interpreted jointly to obligate the public authorities to actively promote equality in the society.⁷⁹⁷

In the previous chapter, we also pointed out the amendment to the Non-discrimination Act, whereby the revised Non-discrimination Act, unlike the previous one,⁷⁹⁸ mentions sexual orientation as a grounds for discrimination. Even though gender minorities are still not mentioned in the Non-discrimination Act currently in force, the prohibition of discrimination applies to them equally.

⁷⁹⁴ Ibid., p. 228.

⁷⁹⁵ Ibid., p. 252-253.

⁷⁹⁶ The Government Bill, HE 309/1993 vp, p. 74–75.

⁷⁹⁷ Järvelä, Saara, Perus- ja ihmisoikeuksien tulkinta, kehitys ja vaikutus seksuaali- ja sukupuolivähemmistöjen oikeudelliseen asemaan, OTM-tutkielma, Helsingin yliopisto, 2014, p. 11.

⁷⁹⁸ Non-discrimination Act, repealed 20.1.2004/21.

Equality of gender minorities is also enshrined in the Equality Act. A partial amendment to the Equality Act entered into force on January 1, 2015. The promotion of gender equality and the prohibition of discrimination based on gender are further regulated by the Act on Equality between Women and Men.⁷⁹⁹ The purpose of the revised act is also to prohibit discrimination based on gender identity or gender expression.

The Equality Act obliges authorities to promote equality between women and men, and to prevent discrimination based on gender identity or gender expression purposefully and systematically.⁸⁰⁰ The obligation applies to all state and municipal authorities and in all sectors. Administration needs to be developed to create and consolidate the necessary procedures and practices for gender equality, and in particular to change the circumstances that prevent equality. In this way, equality must be taken into account in the access to and supply of services.⁸⁰¹

Section 6 c of the Act on Equality between women and men provides that authorities, education providers, other bodies providing education and training, as well as employers are obliged to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression. This obligation must be taken into account in the preparation of gender equality plans and in decisions regarding measures to promote gender equality.

According to the Guide to the Equality Act of the Ministry of Social Affairs and Health, it is important to develop learning materials that do not create prejudices or schematic gender roles. Awareness of the individual nature of gender identity and gender expression should be increased.⁸⁰² The informants of this study have also brought this up in some interviews and workshops⁸⁰³, and as practical examples, they have mentioned learning materials used in sex education during health education classes. In the previously mentioned equality plans for

⁷⁹⁹ Act on Equality between women and men, 8.8. 1986/609.

⁸⁰⁰ See Act on Equality between women and men 8.8.1986/609; purpose of the act 1 §, amended 30.12.2014/1329. See Sosiaali- ja terveystieteiden ministeriö, Tasa-arvolaki 2015, Esite, p. 10.

⁸⁰¹ Ibid.

⁸⁰² Ibid., p. 14.

⁸⁰³ Workshops in Sajos, Inari 3.5.2017 and Hotel Kultahovi 17.8.2017.

educational establishments, the prevention of discrimination based on gender identity or gender expression must be taken into account when preparing the plan and the measures promoting equality.⁸⁰⁴ Similarly, an employer is obligated to prevent discrimination based on gender identity or gender expression in a purposeful and systematic way and it is not possible to evade the obligation of promoting equality by invoking the negative attitudes of other employees or customers, for example.⁸⁰⁵

The Equality Act prohibits direct and indirect discrimination.⁸⁰⁶ In Section 7, direct discrimination means treating someone differently based on gender identity or gender expression. Treating someone differently by virtue of a provision, criterion or practice that appears to be neutral in terms of gender, gender identity or gender expression, but where the effect of the action is such that the persons may actually find themselves in a less favourable position on the basis of gender, is considered indirect discrimination.⁸⁰⁷ Discrimination is prohibited regardless of whether it is based on factual or assumed information relating to the individuals themselves or to someone else (proximity discrimination and discrimination based on presumption). It is forbidden, for example, to harass a person because one of their family members is transgender.⁸⁰⁸

According to the definition in Section 3 of the Equality Act, gender identity means an individual's own experience of their gender. Under the same section, gender expression means expressing one's gender through clothing, behaviour, or by other means. Further, in Section 3 it is noted that provisions on discrimination based on gender identity or gender expression apply correspondingly to discrimination based on the fact that an individual's physical gender-defining characteristics are not unambiguously female or male. According to the Equality Act, also sexual harassment and gender-based harassment are considered discrimination.⁸⁰⁹

⁸⁰⁴ Sosiaali- ja terveystieteiden ministeriö, Tasa-arvolaki 2015, Esite, p. 15.

⁸⁰⁵ Ibid., p. 17.

⁸⁰⁶ Tasa-arvolaki, 7 § (amended 30.12.2014/1329).

⁸⁰⁷ 7 §.

⁸⁰⁸ Sosiaali- ja terveystieteiden ministeriö, Tasa-arvolaki 2015, Esite, p. 24.

⁸⁰⁹ 7 §.

The Ombudsman for Equality supervises compliance with the Act on Equality between Women and Men. The new Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal started their operations in the beginning of year 2015. You can turn to the Non-Discrimination Ombudsman if you have experienced or witnessed discrimination based on age, ethnic or national origin, nationality, language, religion, belief, opinion, political activity, trade union activism, family connections, state of health, disability, sexual orientation or other personal characteristics. The tasks of the Ombudsman also include advancing equality and preventing discrimination.⁸¹⁰ The Non-Discrimination Ombudsman has given several statements and declarations to advance the rights of sexual and gender minorities⁸¹¹ and has cooperated with NGOs in the field.⁸¹²

In cases of discrimination, persons belonging to gender minorities have also contacted the Ombudsman for Equality, who has issued statements on the cases.⁸¹³ The Office of the Ombudsman for Equality published in 2012 a report on the status of gender minorities. One of the key issues in the report was the lack of visibility of gender minorities in public debate, in legislation and in documents. In addition, the main themes included discrimination in working life as well as deficiencies in health care and problems in the legislation concerning gender reassignment.⁸¹⁴

⁸¹⁰ See Sosiaali- ja terveystieteiden ministeriö, Tasa-arvolaki 2015, Esite, p. 40. See also Kansallinen perus- ja ihmisoikeustoimintaohjelma 2017-2019, Oikeusministeriö, Mietintöjä ja lausuntona 9/2017, p. 47.

⁸¹¹ The Non-discrimination Ombudsman, Statements, <https://www.syrjinta.fi/lausunnot>.

⁸¹² The Non-discrimination Ombudsman, <https://www.syrjinta.fi/-/lhbti-yhteison-ja-poliisin-edustajat-tapasivat-pride-viikolla-yhdenvertaisuusvaltuutetun-ja-setan-jarjestamassa-tilaisuudessa-ja-keskustelivat-seksuaa>.

⁸¹³ See The Government Bill, HE 19/2014.

⁸¹⁴ Selvitys sukupuolivähemmistöjen asemasta, Tasa-arvovaltuutetun toimisto, 2012, Ulla-Riitta Parikka.

6.6.1. Equal Marriage Act

In 2002, the Act on Registered Partnerships entered into force in Finland.⁸¹⁵ With this act, same-sex couples were given the opportunity to formalize their partnership and thus granted them access to family law. This was a major change since, in the past, the legislation had not taken into account the established partnership of persons of the same sex in any way.⁸¹⁶ In principle, a registered partnership has the same legal effects as marriage apart from the exceptions listed in the law.

According to the Act on Registered Partnerships, the provisions of the Paternity Act⁸¹⁷ on establishing paternity on the basis of marriage do not apply in the case of registered partnerships. The application of any other provisions concerning the spouse solely on the basis of their gender is also excluded (section 9, subsection 1). The provisions of the Names Act⁸¹⁸ concerning the surname of the spouse or the provisions of the Adoption Act⁸¹⁹ concerning the right of the spouse to adopt a child (section 9, subsection 2) also do not apply to registered partnerships. The effect of the former provision is that the partners in a registered partnership cannot take a common surname by notifying the competent authority, nor can one of them take a hyphenated surname, the second part of which is a common surname. The latter provision, in turn, means that the partners in a registered partnership cannot adopt a child together. Since 2009, the parties in a registered partnership have held the right to adopt inside the family. This allows one party in a registered partnership to adopt a child of the other party.⁸²⁰

A registered partnership sets the partners at a disadvantage compared to marriage, and therefore in 2013 an initiative on amending the Marriage Act, the Act on Registered Partnerships, as well as the Act on legal recognition of the gender of

⁸¹⁵ Act on Registered Partnerships 9.11.2001/950.

⁸¹⁶ Kansalaisaloite eduskunnalle avioliittolain, rekisteröidystä parisuhteesta annetun lain ja transseksuaalin sukupuolen vahvistamisesta annetun lain muuttamisesta, 2013, p. 1., https://www.eduskunta.fi/FI/vaski/Documents/m_10+2013.pdf

⁸¹⁷ Paternity Act 700/1975.

⁸¹⁸ Names Act 694/1985.

⁸¹⁹ Act on Child Adoption 153/1985, repealed with the Adoption Act 22/2012.

⁸²⁰ See also, Lakivaliokunnan mietintö 14/2014, LaVM 14/2014 vp - M 10/2013 vp.

transsexuals, were presented to the Parliament.⁸²¹ The purpose of the Citizens' Initiative was that in the future, couples of the same sex would have the right to marry. The aim of the amendment was to increase equality in society.⁸²²

Based on the Citizens' Initiative, in December 2014, the Parliament adopted in an amendment (156/2015) to the Marriage Act (234/1929). Under the amendment, persons of same sex are able to marry. The amendment concerned the provisions of the Marriage Act where the terms woman and man were used. With the amendment, section 1, subsection 1, section 108, subsections 1 and 2 and section 115, subsection 1 were amended to a gender-neutral form. When adopting the amendment, the Parliament demanded that the government submit a proposal on amendments to other laws required by the Equal Marriage Act to be submitted to Parliament by December 31, 2015.⁸²³ Other legislation was amended in 2016 to comply with the amended Marriage Act.⁸²⁴ The amendments came into force on March 1, 2017.

According to section 1a of the updated Marriage Act⁸²⁵ parties to a partnership registered in Finland can change their partnership into a marriage by submitting a joint notification at the local register's office. The registered partnership will continue as a marriage from the date that the local register office receives the notification. After the law reform, partners of the same sex can no longer formalize their relationship in the methods established in the Act on Registered Partnerships. However, the amendment does not affect the partnerships registered before the new act entered into force, or the validity of partnerships registered abroad.⁸²⁶

⁸²¹ Kansalaisaloite eduskunnalle avioliittolain, rekisteröidystä parisuhteesta annetun lain ja transseksuaalin sukupuolen vahvistamisesta annetun lain muuttamisesta, 2013, KAA 3/2013 vp, https://www.eduskunta.fi/FI/vaski/Documents/m_10+2013.pdf.

⁸²² Ibid., See also Lakivaliokunnan mietintö 14/2014, LaVM 14/2014 vp - M 10/2013 vp.

⁸²³ The Government Bill, HE 65/2015, Hallituksen esitys eduskunnalle eräiksi avioliittolain muutoksen edellyttämiksi lainmuutoksiksi.

⁸²⁴ See in more detail, the Government Bill, HE 65/2015.

⁸²⁵ 8.4.2016/249.

⁸²⁶ See The Government Bill, HE 65/2015; Government bill 104/2017 vp (under consultation) proposes that the section on not applying the provisions of the Names Act concerning the surname of the parties of a registered partnership be removed from the Act on Registered Partnerships.

Marriage is concluded either in a religious ceremony or by a civil marriage. A civil marriage ceremony at the District Court is free of charge during office hours, and the chief judge, district court judge, or a junior district judge, can perform it. At the local register office, the head of the register office, a district registrar, or a notary public working at the local register office can perform marriages.⁸²⁷

Both the Citizens' Initiative aiming at the amendment of the Marriage Act, and the report⁸²⁸ by the Legal Committee of the Finnish Parliament, emphasized that the amendment does not interfere with the right of churches and religious communities to perform marriage ceremonies and to prescribe their terms and forms. The Bishops' Conference on August 31, 2016 decided that, despite the change in the Marriage Act, church ceremonies would not be extended to same-sex couples, although the report of the Bishops' Conference emphasizes that every person is created in the image of God (Gen. 1:27), irrespective of age, language, origin, religion, sexual orientation or family situation.⁸²⁹ According to the report, there is room in the Church for representatives of sexual and gender minorities, and shunning or excluding different minorities is against the principle of love of one's neighbour.⁸³⁰ On September 13, 2017, the Diocese of Helsinki seriously reproached a pastor who had married a same-sex couple. The diocesan chapter invoked the fact that marriage in a church falls within the scope of the provisions on freedom of religion and the autonomy of the church laid down in the Constitution. Under Section 16 of the Marriage Act, the religious congregation decides the conditions and form of the religious wedding where the marriage is performed.⁸³¹ In September 2017 a report on waiving the right to perform marriages, on the significance of performing marriage ceremonies to the identity of the church and on the choices that the church faces, was submitted to the Bishop's Conference. The report recommends freedom of conscience of the clergy as a compromise, which means that marrying homosexual couples would

⁸²⁷ 17 a § (25.8.2016/695).

⁸²⁸ Eduskunnan lakivaliokunnan mietintö 14/2014 vp.

⁸²⁹ Piispaikokouksen selonteko avioliittolain muutoksen johdosta 30.8.2016., <http://sakasti.evl.fi/sakasti.nsf/0/F359F1ED9F897DD0C225770E0034026E/%24FILE/PK-VALMIS-AVIOLIITTOSELONTEKO-2016.pdf>.

⁸³⁰ Ibid.

⁸³¹ <http://www.helsinginhiippakunta.evl.fi/?x18049=2767239>.

be allowed but the pastors would not be obligated to marry them.⁸³² The views are divided, and some pastors have already married and are prepared to marry couples of the same sex despite the official line of the Church.

With the amendment, same-sex married couples can adopt a child together. The parents of a child born in a same sex marriage are not, however, both directly recognised as parents of the child under the law. The so-called presumption of paternity is thus not applied to same sex couples. The legal recognition of the maternity of the second mother still requires adoption within the family.⁸³³ The citizens' initiative on maternity law currently under discussion in the Parliament would, in certain circumstances, enable the recognition of maternity by admission already at the maternity clinic before the birth of the child.⁸³⁴

Although adoptions from outside the family are possible for same-sex couples, in practice, adoptions are hampered by the fact that Finland does not have extensive contacts with countries and organisations that place children in families of two women or two men. In Finland, parents who give their child up for adoption can also influence the choice of the adoptive family.⁸³⁵ One of the informants of this study, in their interview, noted that even if the law allows adoption, couples of the same sex might, in practice, end up in the “eternal” queue to wait for a child to adopt. Additionally, another informant points out the legal challenges related to fertility treatment, in relation to which also the National Non-Discrimination and Equality Tribunal has also in 2016 decided on in 2016, made a decision and confirmed that same-sex female couples have an equal right to use public health care services for fertility treatment.⁸³⁶

⁸³² Helander, Eila, selvitys kirkon vihkiöikeudesta luopumisesta, avioliittoon vihkimisen merkityksestä kirkon identiteetille ja siitä, millaisia vaihtoehtoja kirkolla on edessään, 2017, <http://sakasti.ev1.fi/sakasti.nsf/0/F359F1ED9F897DD0C225770E0034026E/%24FILE/Selvitys%20Suomen%20evankelis%20luterilaisen%20kirkon%20vihkiöikeudesta%20luopumisesta%20ja%20avioliittoon%20vihkimisen%20merkityksesta%20kirkon%20identiteetille%2009062017.pdf>.

⁸³³ <http://seta.fi/avioliittolaki/#otsikko1> .

⁸³⁴ Kansalaisaloite äitiyslainsäätö, KAA 3/2016 vp.

⁸³⁵ <https://www.hs.fi/kotimaa/art-2000005120049.html>

⁸³⁶ See, the National Non-Discrimination and Equality Tribunal: It is prohibited to discriminate female couples in public health care infertility treatments, 20.12.2016, <http://yvvtlk.fi/fi/index/tiedotteet/2016/12/yhdenvertai-suus-jatasa->

With the equal marriage act, the definition of cohabitation will also change, primarily affecting the social benefits and service fees of same sex couples. The aim was that, after the entry into force of the revised Marriage Act, cohabiting couples, whether they are of different sexes or the same sex, would be treated equally in social security legislation.⁸³⁷

6.6.2. Act on legal recognition of the gender of transsexuals

As stated in the Ministry of Justice report, the requirements set out in the law on recognizing the juridical gender (Act on legal recognition of the gender of transsexuals⁸³⁸) pose an obstacle to the realisation of the self-determination of transgender people.⁸³⁹ The previous chapter highlighted the case law of international human rights law monitoring bodies, as well as statements and objections to Finnish legislation regarding the requirement of infertility. According to the Act on legal recognition of the gender of transsexuals, a transsexual will be recognised as belonging to the opposite sex than the one they have been registered under in the Population Information System, if they present a medical statement that they permanently feel that they belong to the opposite sex, that they live in the respective gender role, and that they have been sterilized or are infertile for another reason. The law also requires that the person be of age.

Upon request by the Ministry of Social Affairs and Health, the National Advisory Board on Social Welfare and Health Care Ethics (ETENE) gave a statement on the amendments needed to the transgender act in 2013. The Advisory Board finds the sterilization requirement to be questionable at the very least, from the point of view of the Council of Europe Human Rights Convention, and the personal

arvolautakuntanaispajaisaasyrjiajulkisenterveydenhuollonhede-lmoityshoidoissa.html. In 2017, the amendment of Infertility Act (2006/1237) become in force, according to which infertility treatments can be given to a couple or a woman that does not live in marriage or similar circumstances with a man.(2§, 2, 8.4.2016/254).

⁸³⁷ <http://seta.fi/avioliittolaki/#otsikko1>.

⁸³⁸ Act on legal recognition of the gender of transsexuals (563/2002).

⁸³⁹ Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa, Selvityksiä ja ohjeita 34/2014, Oikeusministeriö, p. 25

integrity safeguarded by the Constitution. According to ETENE, there are no medical reasons relating to gender reassignment to justify the requirement.⁸⁴⁰ In Finland, a joint declaration by the Ombudsman for Equality and the Non-discrimination Ombudsman issued on October 11, 2016 notes that the current Transgender Act violates the right of transgender persons to equality, personal integrity and to private and family life, and it violates their right to self-determination.⁸⁴¹ In 2015, the Committee of Legal Affairs of the Parliament noted that a comprehensive review of the need to amend the transgender law was necessary.⁸⁴²

On May 6, 2015, a working group for the Ministry of Social Affairs and Health issued a motion to abolish the infertility requirement included in the Government bill. The working group also proposed that the government investigate the possibility of amending the legislation so that a person could have their gender recognised without submitting a medical report on their transsexual status.⁸⁴³ Likewise, the working group proposed that it could be justified to re-examine also the requirement of reaching majority before the juridical gender can be recognised. Consideration should be given to the best interest of the minor and their right to decide their own affairs according to their age and level of development, and the right of the minor to special care and protection of their health and development while they are still developing.⁸⁴⁴ Furthermore, the working group proposed that the title of the law should be changed to “Act on the legal recognition of gender”⁸⁴⁵. In this regard, the working group refers to the statement issued by ETENE to the Ministry of Social Affairs and Health in 2013, which states that instead of “transsexual”, a more appropriate term would be “transgender”.⁸⁴⁶

⁸⁴⁰ ETENE, lausunto transseksuaalin sukupuolen vahvistamisesta annetun lain muutostarpeet, 17.4.2013, STE/5023/2012.

⁸⁴¹ A joint declaration by the Ombudsman for Equality and the Non-discrimination Ombudsman <https://www.tasa-arvo.fi/-/translaki-on-uudistettava-valittomast-1>.

⁸⁴² Lakivaliokunnan mietintö LaVM 7/2015 vp.

⁸⁴³ Sukupuolen oikeudellisen vahvistamisen edellytykset, Työryhmän loppuraportti, Sosiaali- ja terveysministeriön raportteja ja muistioita 23/2015.

⁸⁴⁴ Ibid., p. 12-13.

⁸⁴⁵ Ibid., p. 17.

⁸⁴⁶ ETENE lausunto transseksuaalin sukupuolen vahvistamisesta annetun lain muutostarpeet, STM 5023/2012, 17.4.2013.

The working group's proposal states that in Finland, infertility caused as a medical side effect of hormone treatment during gender reassignment has been interpreted as meeting the requirement of infertility laid down by the Transgender Act. This applies despite the fact that the effects of hormone therapy are usually reversible.⁸⁴⁷ The Transgender Act does not explicitly stipulate that sterility should be permanent. Gender reassignment with genital surgery in turn leads to permanent inability to reproduce.⁸⁴⁸ The working group's proposal states that, although the legal recognition of gender in Finland, with the exception of certain individual cases, is possible without the requirement of permanent infertility, the inability to reproduce as a condition for legal recognition of gender is in itself problematic from the point of view of fundamental and human rights.⁸⁴⁹ As Rautiainen points out, the infertility requirement encompasses the idea that it would be undesirable for people who are transgender to have children or families, which is a violation of human rights obligations concerning family life and non-discrimination to which Finland is committed.⁸⁵⁰

Registered associations Seta and Trasek, together with many other human rights organisations, consider in their opinions relating to the proposal to amend the Transgender Act, that the self-determination of transgender people requires that the legal recognition of gender is separated from the medical gender reassignment measures. Instead, Finland should adopt a procedure where the gender could be recognised based on the person's own notice.⁸⁵¹

Health services related to gender reassignment are covered by public health care in Finland. However, the links between the care system and the legal recognition

⁸⁴⁷ Sukupuolen oikeudellisen vahvistamisen edellytykset, Työryhmän loppuraportti, Sosiaali- ja terveysministeriön raportteja ja muistioita 23/2015, p.15.

⁸⁴⁸ Ibid.

⁸⁴⁹ Ibid.

⁸⁵⁰ Rautiainen, Pauli, Vaatimus lisääntymiskyvyttömyydestä loukkaa transihmisten oikeuksia, perustuslakiblogi 30.8.2017, <https://perustuslakiblogi.wordpress.com/2017/08/30/pauli-rautiainen-vaatimus-lisaantymiskyvyttömyydesta-loukkaa-transihmisten-oikeuksia/>.

⁸⁵¹ See joint statement by human rights organisations, <http://seta.fi/ihmisoikeusjarjestot-vaativat-itsemaaraamisoikeus-sukupuoleen-lakiuudistuksen-lahtokohdaksi/>; Seta ry:n ja Trasek ry:n lausunto sosiaali- ja terveysalan eettiselle neuvottelukunnalle. Asia: Tarve 'transseksuaalin sukupuolen vahvistamisesta' annetun lain saattamiseen ajan tasalle 14.4.2013., <http://seta.fi/setan-ja-trasekin-lausunto-sosiaali-ja-terveysalan-eettiselle-neuvottelukunnalle/>.

of gender have proved to be problematic, because the legal recognition of gender depends on the treatment process, but reimbursement for the cost of medication by the Social Insurance Institution still requires the legal recognition of gender.⁸⁵² Treatment protocols of intersex children are problematic insofar as children are subjected to irreversible measures without medical grounds.⁸⁵³

As stated in the report by the Ministry of Justice, the gender reassignment process may expose persons to discrimination in working life and education, because of identifying as transgender is subject to strong prejudice, and it is impossible to keep gender reassignment private, at least during all the stages of the transition process.⁸⁵⁴ Transgender or other gender identities or gender expressions that are different from the majority population can expose the individuals to discrimination, if they are revealed. One fundamental issue, which society needs to resolve through changes in attitudes and legislation, is that various elements of society are built on the two-gender norm, which can prevent persons belonging to both gender and sexual minorities from participating in and enjoying private and family life.⁸⁵⁵ Heteronormative thinking and related practices are often automatic. People who identify themselves as transgender as well as other people who do not identify along gender boundaries, as well as individuals identifying as a sexual minority act counter to heteronormative expectations of gender and sexuality.⁸⁵⁶ Heteronormative practices are not only centered around finding heterosexuality self-evident or presenting it as the only positive option. They also often include practices that show non-heteronormative options as unacceptable, forbidden, or undesirable.⁸⁵⁷

As noted in the proposition by the working group of the Ministry for Social Affairs and Health, the possibility to recognise gender based on the person's own

⁸⁵² Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa, Selvityksiä ja ohjeita 34/2014, Oikeusministeriö, p. 25-26.

⁸⁵³ Ibid.

⁸⁵⁴ Ibid.

⁸⁵⁵ Ibid.

⁸⁵⁶ Lehtonen, Jukka, Työntekijöiden moninaisuus ja työelämän heteronormatiivisuus, teoksessa J. Lehtonen, Seksuaali- ja sukupuolivähemmistöt työelämässä, STAKES, raportteja 269, 2002, p. 10.

⁸⁵⁷ Ibid., p. 11.

notice should be examined in light of the Constitution.⁸⁵⁸ In addition to the principles of equal treatment and non-discrimination in Section 6, at least the right to personal liberty, integrity and security laid down in Section 7 and the protection of private life under Section 10 of the Constitution have a central role. The right to self-determination can be considered to belong to our fundamental rights system as part of the general right to personal liberty and integrity. According to the preparatory works of the fundamental rights reform, personal liberty is by nature a general fundamental right that protects not only physical liberty but also free will and self-determination.⁸⁵⁹ The current practice for a trans person who wants to have their gender recognized, requires a long and both mentally and physically arduous medical process, where a doctor will decide on their identity, and is therefore a clear violation of the right to self-determination.⁸⁶⁰

At the time of the writing of this report, the pregnancy of a male couple was on the news. The story raised a debate because of the clause on forced sterilization included in the transgender act. For example, fertility treatments are refused invoking the transgender legislation, which prevents transgender people from having their own biological children. However, fertility may return if hormone replacement therapy is interrupted.⁸⁶¹ At present, the challenge is that the health care system and legislation do not recognise a situation where the person expecting a child is a man.⁸⁶² In addition to the rights of transgender persons, the rights of the child emerge as a key issue. Children must not be disadvantaged due to the fact that the health system does not recognise a man as able to be the person giving birth. In order to safeguard children's rights, it has been pointed out that

⁸⁵⁸ Sukupuolen oikeudellisen vahvistamisen edellytykset, Työryhmän loppuraportti, Sosiaali- ja terveysministeriön raportteja ja muistioita 23/2015, p. 20.

⁸⁵⁹ Hallituksen esitys eduskunnalle Suomen uudeksi hallitusmuodoksi HE 1/1998; See Hallituksen esitys eduskunnalle laiksi sosiaalihuollon asiakkaan ja potilaan itsemääräämisoikeuden vahvistamisesta ja rajoitustoimenpiteiden käytön edellytyksistä sekä eräksi siihen liittyviksi laeiksi, HE 108/2014.

⁸⁶⁰ Seta, Miesparien raskausuutinen konkretisoi translain ongelmia, 9.10.2017, <http://seta.fi/miesparin-raskausuutinen-konkretisoi-translain-ongelmia/>.

⁸⁶¹ Ibid.

⁸⁶² Lapin Kansa, Isä on ensi kertaa raskaana Suomessa – terveydenhuollon tietojärjestelmät eivät tunnista tilannetta, 7.10.2017, <https://www.lapinkansa.fi/kotimaa/isa-on-ensi-kertaa-raskaana-suomessa-terveydenhuollon-tietojarjestelmat-eivat-tunnista-tilannetta-200443437/>.

for example, the Act on Assisted Fertility Treatments should be changed so that children of same-sex couples would have the same rights to their parents as children of other families.⁸⁶³

Despite the proposition by the working group of the Ministry of Social Affairs and Health and statements by numerous human rights supervisory bodies, the infertility requirement was not abolished when the transgender act was amended. The other proposed amendments did not take place either, except for the requirement of unmarried status. The Trans Act was amended together with the Marriage Act.⁸⁶⁴ Under Section 1 of the previous Act on legal recognition of the gender of transsexuals, marriage or registered partnership were, in principle, an obstacle to the recognition of gender.⁸⁶⁵ Under Section 2 of the Act, it was possible to recognise gender upon the consent of the spouse, but in this case the form of the partnership was converted either from marriage to registered partnership or from registered partnership to marriage.

In the current Act on legal recognition of the gender of transsexuals, the requirement that the person requesting the recognition of their gender cannot be married or in a registered partnership has been removed. In addition, the previous provision on changing marriage into a registered partnership when gender is recognized, was removed from the act. However, a registered partnership will still be converted into a marriage.⁸⁶⁶

The association of families of trans children and youth points out that at the moment, puberty blocker treatment is only available from 16 years of age, even though actual puberty often begins a lot earlier.⁸⁶⁷ Timely access to blocker

⁸⁶³ Tamperelainen, <http://www.tamperelainen.fi/artikkeli/364713-pelkka-tasa-arvoinen-avioliittolaki-ei-riita>.

⁸⁶⁴ The Government Bill, HE 65/2015, Hallituksen esitys eduskunnalle eräksi avioliittolain muutoksen edellyttämiksi lakimuutoksiksi.

⁸⁶⁵ Act on the Confirmation of Gender of a Transsexual, laki transseksuaalin sukupuolen vahvistamisesta 565/2002.

⁸⁶⁶ Act on the Confirmation of Gender of a Transsexual, Laki transseksuaalin sukupuolen vahvistamisesta annetun lain muuttamisesta 252/2016. See the Government Bill, HE 65/2015.

⁸⁶⁷ Aapalahti, Riikka, <http://www.raapalahti.fi/2017/06/translasten-ja-nuorten.html>.

therapy would prevent many surgical procedures, irreversible change in the voice of trans girls and social and psychological problems.⁸⁶⁸

Organisations representing gender minorities⁸⁶⁹ have expressed their concern on the effects of the Government bill for the Name Act that is only in consultation at the time of writing of this report (HE 104/2017 vp)⁸⁷⁰ and on its effects on gender minorities. According to the government's proposal, a forename that is established for the same legal gender can be accepted as a new name. A derogation from the gender rule would be possible on the basis of the applicant's gender identity if the applicant provides a reliable explanation. The organisations express concern that if the authority deciding on the name is given discretion to assess the authenticity of gender identity, decisions can vary in such a way that discrimination based on gender identity or gender expression as prohibited by the Equality Act could occur. The NGOs point out that if the proposed reflection remains in the Act, it should establish sufficiently clear application instructions, which would ensure a consistent regulatory practice.⁸⁷¹

In conclusion, from a legal viewpoint it is clear that the proposed amendments to the Transgender Act, supported by decisions and recommendations of human rights supervisory bodies, must be carried out. In particular, the infertility requirement violates the human rights and fundamental rights of transgender people and is in conflict with the Equality Act. A recent decision by the European Court of Human Rights obligates Finland to amend the law. As was mentioned in the previous chapter, a draft bill amending the transgender act has already been issued, and it is currently in the Social Affairs and Health Committee, where there is not yet sufficient consensus to take the matter forward. There are, however, no plans to amend the law to safeguard self-determination, so that the recognition of gender could take place with the person's own notice instead of a medical, psychiatric diagnosis.

⁸⁶⁸ Ibid.

⁸⁶⁹ Trasek, Seta, Dreamwear Club ja Translasten ja -nuorten perheet ry., See<http://trasek.fi/>.

⁸⁷⁰ The Government Bill, HE 104/2017 vp., Hallituksen esitys eduskunnalle etu- ja sukunimilaiksi ja laiksi rekisteröidystä parisuhteesta annetun lain 8 ja 9 §:n muuttamisesta.

⁸⁷¹ The chair of Trasek Panda Eriksson proposes this also. See <http://trasek.fi/>.

The joint campaign of Trasek and Seta to promote the Transgender Act, “Kuuluu kaikille – Belongs to everyone” and Amnesty’s campaign “Transgender Act Now” calls for a comprehensive reform of the transgender act. According to the organisations, it is not sufficient to abandon the requirement of infertility, but Finland must also abolish other conditions from the transgender legislation that are problematic from a human rights perspective. The organisations find that the legal recognition of gender must be separated from the pathologizing medical process, and a medical assessment must be based on the needs of the person undergoing gender reassignment. According to the organisations, the age-limit for legal gender recognition must also be abandoned.⁸⁷²

Several human rights organisations and political actors have issued a joint statement noting that it is necessary to consider whether the transgender act would still be necessary after the proposed amendments. The provisions on the recognition of legal gender might be better suited to be included in the Population Information Act, in line with the Danish model, because this Act regulates other situations involving changes in the personal identity code.⁸⁷³ Following the joint statement, issued in 2015, Norway among other countries has revised its legislation in such a way that any person over 16 years of age may have their gender legally recognised upon their own notice. Even persons between 6-16 years of age may have access to gender reassignment with the permission of their parents.⁸⁷⁴ Argentina, Ireland and Malta also have transgender legislation based on self-determination.⁸⁷⁵ Sweden, Spain, Portugal and the Netherlands have abolished the infertility requirement.⁸⁷⁶

⁸⁷² Trasek ry., Seta ry., <http://trasek.fi/2017/06/30/euroopan-komission-kannanotto-lisaantymiskyvyttomyysvaatimuksesta-luovuttava-sukupuolen-juridisen-vahvistamisen-ehdona/>.

⁸⁷³ Seta, <http://seta.fi/seta/wp-content/uploads/2015/06/Kannanotto-24.6.2015-Transihmisten-ihmisoikeudet-toteutettava-translaki-uudistettava.pdf>;

<http://www.equaldex.com/region/denmark>; Denmark adopted a trans act on 11.6.2014, where the gender is recognised based on a notification by the person. See Amnesty International, Tanskan translaki merkittävä askel, <https://www.amnesty.fi/ihmisoikeusjarjestot-suomen-uudistettava-translaki-kiireellisesti/>

⁸⁷⁴ Seta, Norjaan itsemääräämisoikeuteen perustuva translainsäädäntö, 7.6.2016, <http://seta.fi/norjaan-itsemaaraamisoikeuteen-perustuva-translainsaadanto/>.

⁸⁷⁵ Ibid.

⁸⁷⁶ Kuuluu kaikille, Suomeen voidaan saada Pohjoismaiden paras translaki, 5.7.2017, <http://www.translaki.fi/2017/07/05/suomeen-voidaan-saada-pohjoismaiden-paras-translaki/>. See analysis on international development in transgender legislation, Kyger, Madison H., "Emerging

6.7. Multiple discrimination faced by Sámi persons identifying as a sexual and/or gender minority

The interviews in this part of the study focused primarily on multiple discrimination against Sámi persons identifying as a sexual and/or gender minority.⁸⁷⁷ In the interviews, experiences of direct, indirect and structural discrimination emerged. In addition, the types of discrimination covered by multiple discrimination include all three types of discrimination: sequential multiple discrimination, cumulative discrimination and intersectional discrimination. There are also clear distinctive cases of out-group and in-group discrimination experienced by the informants, and their experiences of discrimination are discussed in this chapter by categorising discrimination with the help of the concepts of in-group and out-group discrimination.⁸⁷⁸ The following sections will focus on analysing the experienced discrimination elaborated through the interviews and workshop material gathered during this project.

6.7.1. Multiple discrimination faced by Sámi persons identifying as a sexual and/or gender minority in Finnish society

All of our five informants report in the interviews that they face discrimination that is classified as out-group discrimination in our study.⁸⁷⁹ The informants do not, in all situations, necessarily describe their experiences with the term *discrimination*. However, according to the definition of discrimination used in this report⁸⁸⁰, the experiences reported in the interviews can be categorised as discrimination and manifesting as different types of discrimination. Discrimination has been encountered in a direct, indirect and structural form and as harassment⁸⁸¹. The informants describe their experiences of discrimination in

Issues: A Global Analysis: Legal Recognition and Equal Treatment of Transgender Citizens," *University of Baltimore Journal of International Law* 2016, Vol. 5 : Iss. 1 , Article 6: 118-123.

⁸⁷⁷ See more on multiple discrimination in chapter 3. of this report.

⁸⁷⁸ See on defining discrimination in section 3.1. of this report.

⁸⁷⁹ See more on in-group and out-group discrimination in section 3.2.2 of this report.

⁸⁸⁰ See e.g. Makkonen (2003), p. 10-12. See the chapter 3.1. of this report.

⁸⁸¹ See a more precise definition in the section 3.1. of this report.

general, as a part of their everyday life in Finnish society, relating to both their Sámi identity as well as their sexual and/or gender identity. In some situations, it is particularly noticeable how the Sámi identity and being a member of a sexual or gender minority intersect in the experiences of discrimination. It is, of course, important to remember that these two identities intersect each other in all aspects of the interviews, since the cultural backgrounds and life experiences of these persons influence also their experiences and interpretations of events, as well as how they perceive the world.

6.7.1.1. Discrimination based on Sámi identity in Finland

Some of the informants feel that, particularly in Southern Finland, being Sámi is often seen as a positive thing that raises people's interest and gets people to, for example, ask questions about being Sámi or about Sámi languages. However, the informants also have experiences of discrimination in relation to their Sámi identity and people's curiosity can occasionally be perceived as uncomfortable. Some informants report that people often expect them to be able to answer all questions on Sámi, ranging from the history of the Sámi to the current state of the Sámi society. The questions can sometimes be very personal, which can be perceived as invasive. One informant mentions that people sometimes want to take pictures with the informant, if the person reveals their Sámi identity, which can in some cases result in them not wanting to reveal their ethnicity. The issues mentioned above also emerged in the workshops held in Inari. In the workshops, it was also reported that non-members of the Sámi community sometimes not only take photos but also come to touch persons wearing traditional Sámi clothing in public places.⁸⁸² In the discussions and interviews, these phenomena are perceived as related specifically to the Sámi identity of the persons and, for example, Finns were not believed to face similar treatment. The researcher also received a strong impression that some informants and workshop participants feel that their personal space and privacy are not respected. While they do not necessarily always concern intentional harassment on the part of a non-member of the Sámi community, the informants perceive the events referred to above as uncomfortable.

⁸⁸² Workshops in Inari on 3.5.2017 and 17.8.2017.

A part of the informants feel that as Sámi they are constantly prompted to react and take positions on social issues. Among other things, the interviews bring up the recent discussion in Finland on the Tenojoki fishing agreement and the negotiation process leading to its ratification, which has raised critical discussion among the Sámi because it is seen as infringing their human rights⁸⁸³. In addition, one informant sees, for example, the restrictions introduced in the new fishing legislation as trampling on the rights of the Sámi⁸⁸⁴.

Language rights are not seen in the interviews as adequately implemented, since for example several social and health services are not available in the Sámi language⁸⁸⁵. The discrimination examples above can be seen as directed at the Sámi as an indigenous people and thus naturally also at individuals. According to the researcher's interpretation, the interviews convey very strongly the fact that the informants perceive the discrimination against their people also as personal discrimination against them. A part of the informants see it as their duty to react to the discrimination they have experienced, and is directed against their people, and mention that its impacts are visible also in other areas of their life. The constant pressure to react and take a stand for things is experienced as burdensome, and one informant says it has a negative impact for example on their individual development.

Early childhood education services in Sámi languages are scarcely available, especially in locations in Southern Finland⁸⁸⁶, which in some cases has resulted

⁸⁸³ See also The Sámi Parliament, Saamelaiskäräjät, Tenon kalastussopimus loukkaa saamelaisten ihmisoikeuksia, 28.3.2017. Available at:

http://www.samediggi.fi/index.php?option=com_content&task=view&id=1333&Itemid=149.

The Sámi Parliament, Saamelaiskäräjät, The Sámi Parliament has presented a complaint to the Chancellor of Justice about the conduct of the Ministry of Agriculture and Forestry. Available at: http://www.samediggi.fi/index.php?option=com_content&task=view&lang=en&id=1296. See generally on the Teno River fishing agreement e.g. in Heinämäki et al. (2017), 72-76. Laki kalastuksesta Tenojoen vesistöissä Norjan kanssa tehdyn sopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja soveltamisesta (176/2017).

⁸⁸⁴ See generally on fishing laws concerning the Sámi e.g. Heinämäki et al. (2017), 64-72. Fishing Act (379/2015).

⁸⁸⁵ See e.g. The Sámi Parliament, Saamelaiskäräjät, Posken saamelaisyksikkö, Lehtola, Riitta & Ruotsala, Pia, Saamenkielisten palveluiden nykytilakartoitus. Saamelaisten lasten-, nuorten ja perheiden palvelut, (2017), 32-34 & 37-39. Available at: http://stm.fi/documents/1271139/4067344/SAAMELAPESelvitys110117_final.pdf/f1418169-7e37-4d7a-803d-30d192ffed5f.

⁸⁸⁶ See e.g. The Sámi Parliament, Saamelaiskäräjät 2017, 19-20.

in the parents having to place their children into Finnish day care or to stay at home in order to ensure by themselves the development of the child's Sámi language skills. The examples presented above can be seen as concrete examples of indirect and structural discrimination experienced by the Sámi in Finnish society. It is also possible, in some cases, to see discrimination relating to the allocation of resources as underlying these examples, particularly with regard to the provision of services in Sámi languages.

Only one informant reports having faced direct aggression in connection to their Sámi identity. This only occurs, according to the informant, when they wear the traditional Sámi clothing in public. In these cases, the person received offensive comments. One informant reports having been also subject to inappropriate comments relating to the Sámi community in contact with social services. Furthermore, discussion on public forums on the internet and on the comment and audience sections of newspapers is reported to be inappropriate on occasion. In their interview, one informant discussed the misuses of the Sámi clothing, which have recently been widely discussed also in the media and which the person perceives as offensive⁸⁸⁷. The results of this study relating to experiences of harassment and hate speech are also comparable to the report of the Ministry of Justice titled "*Usein joutuu miettimään, miten pitäisi olla ja minne olla menemättä*" *Selvitys vihapuheesta ja häirinnästä ja niiden vaikutuksista eri vähemmistöryhmiin*. ("*You often have to ponder how you should be and where you should not go*" *Study on hate speech and harassment and their impacts on different minority groups*) (Jauhola et al. 2016), published in 2016. In that study, negative comments, verbal insults, and harassment were mentioned as some of the most common manifestations of hate speech and harassment against the Sámi. The Internet is mentioned as the most common scene of events for hate speech and harassment.⁸⁸⁸

⁸⁸⁷ See e.g. YLE 10.5.2016, "Kiasmaa arvostellaan feikkisaamenpukuvideon ostamisesta". Available at: <https://yle.fi/uutiset/3-8869765>; YLE 1.12.2015, "Suomen Miss Maaailma – kilpailija edustaa pilailupuodin lapinpuvussa". Available at: https://yle.fi/uutiset/osasto/sapmi/suomen_miss_maaailma_-_kilpailija_edustaa_pilailupuodin_lapinpuvussa/8493787.

⁸⁸⁸ Jauhola, Laura; Korhonen, Nita; Oosi, Olli & Huttunen, Hannu-Pekka, "Usein joutuu miettimään, miten pitäisi olla ja minne olla menemättä" *Selvitys vihapuheesta ja häirinnästä ja niiden vaikutuksista eri vähemmistöryhmiin*, Helsinki: Oikeusministeriö, *Selvityksiä ja ohjeita* 7/2016, 106-107.

One informant reports in their interview that Finnish people have also questioned the person's Sámi identity when they are not wearing traditional Sámi clothing. The informant describes having received comments on not looking like a Sámi, which led to placing guesses on how much Sámi ancestry the person has. The person feels that members of the majority population often perceive Sámi identity as only a genetic matter and forget that it is also about a living culture and its practice.

One concrete example of indirect and resource-related discrimination against the Sámi are scholarship applications where, according to one informant, applications made by Sámi are often categorised under the Sámi theme. According to the person, foundations do not normally fund several projects around the same theme, as a result of which the Sámi are in principle forced to compete over a single grant. This, in turn, indirectly leads to ethnic background acting as a restrictive factor in some cases. The informant feels that, in the Finnish society, a Sámi person is often seen in different situations as only representing the Sámi ethnicity, in which case the individual interests and personalities of individuals are overshadowed by the Sámi identity.

6.7.1.2. Discrimination in relation to sexual and/or gender identity in Finland

The interviews also reveal several different forms of discrimination in relation to sexual and/or gender identity. In particular, the preconditions for gender reassignment laid down in the Act on legal recognition of the gender of transsexuals⁸⁸⁹ concerning, among other things, the person's inability to reproduce and the required medical statement stating that the person permanently feels that they belong to another gender than the one assigned to them at birth, are perceived as discriminatory. Some of the informants perceive the fact that transgender people cannot decide their gender for themselves, but that the assessment is made by an outsider, as discriminatory. The Government bill elaborating on that provision of the law specifies that the gender of a person is assessed by a multiprofessional team, which determines the suitability and

⁸⁸⁹ 562/2002 & 252/2016, 1 § point 1). See also chapter 6.6.2. of this report.

required preparedness of the patient for hormonal and surgical treatment. The permanence of transgender persons wanting to transition is assessed by having the person live for a specified time period in the role of another gender.⁸⁹⁰ The matters mentioned above have been the subject of recommendations given to Finland in the third cycle of the UN Universal Periodic Review.⁸⁹¹ One informant also brings up the requirement that a person must be the age of majority as a discriminatory prerequisite of gender reassignment⁸⁹². The current binary gender definition is also perceived as discriminatory against persons of non-binary gender⁸⁹³. The Act on legal recognition of the gender of transsexuals contains provisions, which can be seen as examples of structural discrimination in legislation.

Some informants mention that they are satisfied in regards to the revision of the Equal Marriage Act, since generally speaking, the situation has improved.⁸⁹⁴ The official position of the Church is nevertheless still not to carry out ecclesiastical marriage ceremonies for same-sex persons⁸⁹⁵, which some informants perceive as discriminatory. In addition, one informant states that they perceive the Church's attitudes as discriminatory, without specifying further what they refer to. Legislative improvements would also be seen as welcome in the context of legislation on fertility treatments⁸⁹⁶. In connection with the Adoption Act, one informant states that, although same-sex couples may now apply for a permission to adopt and be considered as adoptive parents, the person does not believe that adoption for same-sex couples will be realised in practice. The website of Seta - LGBTI Rights in Finland also mentions it to be unlikely that many same-sex

⁸⁹⁰ The Government Bill, HE 56/2001 vp, 13.

⁸⁹¹ URP, Report of the Working Group on the Universal Periodic Review, Finland, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 25.8.2017, p. 6. Available at: <http://formin.fi/public/download.aspx?ID=170493&GUID={B14A0CE7-D760-4EC2-A68E-369230C5AF71}>.

⁸⁹² See 252/2016, 1 §, paragraph 2.

⁸⁹³ See further the chapter 6.1.1. of this report.

⁸⁹⁴ See the chapter 6.6.1. of this report.

⁸⁹⁵ Piispainkokouksen selonteko avioliittolain muutoksen johdosta, 30.8.2016. Available at: <http://sakasti.evl.fi/sakasti.nsf/0/F359F1ED9F897DD0C225770E0034026E/%24FILE/PK-VALMIS-AVIOLIITTOSELONTEKO-2016.pdf>.

⁸⁹⁶ See the chapter 6.6.1. of this report.

married couples would end up as adoptive parents. At the same time, it is noted that the discriminatory nature of these decisions is very difficult to prove in practice, since the decision-making in the adoption process involved a number of different parties that also form a part of the structures of our heteronormative society.⁸⁹⁷

The workshops⁸⁹⁸ and interviews also discussed the heteronormativity of society in other ways that cause the informants to experience discrimination in everyday life. Examples of this include e.g. primary schools where, among other things, sexual education often does not consider things from the perspective of persons belonging to sexual and gender minorities. Public facilities, such as toilets and changing rooms in sports facilities, are generally gendered.

Inappropriate and even racist and thereby discriminatory commenting is perceived to occur frequently on social media. One informant reports that, as a result of the racist comments and provocative opinions they have received, the informant has become cautious about telling other people about their sexual orientation. Social media and Facebook in particular are brought up as an arena of harassment and hate speech also in the aforementioned report of the Ministry of Justice⁸⁹⁹.

6.7.2. Experiences of intersectional discrimination relating to the Sámi identity and sexual and/or gender identities

Themes and discriminatory experiences intersecting the Sámi identity and the sexual and/or gender identity of the participants clearly emerge in the interviews. One informant reports that their Sámi identity and the fact that they belong to a sexual minority already evoke surprise in people. The informant feels that Sámi persons belonging to a sexual and gender minority still do not have a voice in the Finnish society. Another informant also says they feel invisible as a Sámi representative of a sexual and gender minority, and mentions this as structural

⁸⁹⁷ See Seta, Adoptio, 20.9.2017. Available at: <http://seta.fi/avioliittolaki/#otsikko7>.

⁸⁹⁸ Workshops in Inari 3.5.2017 and 17.8.2017.

⁸⁹⁹ Jauhonen et al. (2016), 80.

discrimination in our society. The person also reports having heard remarks from outsiders to the effect that belonging to one minority should already be sufficient.

In the context of social and health services, regarding for example mental health services, it is perceived that a Sámi person belonging to a sexual and/or gender minority does not have access to the service they need, since service providers scarcely possess sufficient knowledge of Sámi culture⁹⁰⁰ and/or expertise on sexual and gender minorities. In such cases, the informants feel they are left without support and, according to one informant, in the worst case the situation may even get worse.

One informant raises the issue that a general negative atmosphere towards the Sámi, which occasionally manifests for example on social media, also affects the informant so that they cannot always speak openly about all their experiences relating to their queer identity. The person says they are afraid that, by revealing that the Sámi community is not unanimous in all matters and that gender discrimination occurs even within the community, the informant might generate backlash against their own community. The researchers of the project interpret the informant's story as revealing that, in the current society, the Sámi community has ended up in a position where people are afraid to discuss the internal problems of the community due to fears that such issues can, in the future, be used against the community. As has been noted above, some informants feel that even now the rights of the Sámi are not fully realised in Finland. Therefore, it is felt that open discussion on certain problems can further worsen the position of the community.

6.7.3. In-group discrimination faced by Sámi sexual and gender minorities in Finland

The interviews of all five informants bring up indications of situations which, in this report, are interpreted as falling under in-group discrimination⁹⁰¹. Almost all informants emphasize that they have not experienced direct discrimination within the Sámi community, but descriptions of different forms of discrimination can

⁹⁰⁰ See more on this in Saamelaiskäräjät 2017, p. 37-38.

⁹⁰¹ See definition of in-group discrimination in the chapter 3.2.2. of this report.

nevertheless be found among the material. In this report, the Sámi community is regarded as one in-group but also the in-groups formed by sexual and gender minorities, referred to by some informants in their interviews, can be considered as another in-group relevant to LGBTIQ persons.

6.7.3.1. Experiences of discrimination within the Sámi community

The in-group discrimination observed in the Sámi community often concerns more generally the patriarchal nature and the position of women in the Sámi community, which have already been discussed earlier in this chapter⁹⁰². Some informants bring up the fact that women and men are treated differently within the Sámi community. The mentioned examples of this issue include the practice of traditional livelihoods, which is often automatically seen as a man's job. One informant feels that a woman is frequently able to participate in the practice of traditional livelihoods specifically through her male partner. The informant reflects on the possibilities of those persons who are in a relationship with a member of the same sex, and particularly the possibilities of women, for example to begin reindeer-herding on a full-time basis. The person feels that the position of a Sámi woman is frequently determined in such situations through her male partner. Differences in the positions of men and women are, according to one informant, particularly visible exactly among the practitioners of traditional livelihoods; however, the same gender norms do not necessarily apply to the men and women among the Sámi living in cities and working in offices. The position of homosexual cis-gender males and transgender persons was also perceived as weak within the Sámi community. This is due to, inter alia, the ideal of masculinity that has already been discussed earlier⁹⁰³.

One informant sees the fact that they live in a city as an advantage, since there they have been able to create distance from the Sámi community. The person does not acknowledge having been subject to discrimination within the Sámi community in connection with their sexual identity, but reports having to think a little about how to express the matter to, for example, the person's relatives. The informant does not perceive the fact of belonging to a sexual minority as affecting

⁹⁰² See the chapter 6.3.1. of this report.

⁹⁰³ See pages 177-178 of this report.

their position in the Sámi community but says that the topic has nevertheless raised discussion among other people. Another informant mentions having never faced direct discrimination on the part of the Sámi community, but recognises having evoked a great deal of discussion regarding their sexual orientation. Some informants also say they are slightly hesitant to bring the matter up in the Sámi community, because they are afraid of negative reactions. One informant also reported being afraid that other people's attitudes towards them could change in the Sámi community, should their sexual orientation be revealed.

One informant has not yet told all their relatives about belonging to a sexual and gender minority and recounts also that not all members in the person's family wish to speak about the matter openly but prefer to stay silent⁹⁰⁴. The preference for silence is also reflected in the fact that those in a relationship with a person of the same sex do not necessarily receive questions on their private life in the same way as heterosexual cis-gender persons do.

The gender division in Sámi traditional clothing was brought up both in the interview material and in both workshops⁹⁰⁵. The use of traditional clothing by the Sámi is regulated by certain norms in the Sámi community and those norms strictly adhere to the binary gender divide. Our material nevertheless frequently ponders what kind of clothing could be worn, for example, by non-binary people who do not identify as male or female. In relation to Sámi traditions, one informant also wonders if it would be possible to organise a traditional Sámi wedding, should the person want to marry another person of the same sex.

It was mentioned both in the workshop⁹⁰⁶ and by one informant that discriminatory comments relating to sexual and gender minorities have also occurred in the Sámi media. Apologies have later been expressed over these comments and also stories around the topic, written in the spirit of increasing understanding and knowledge, have been published⁹⁰⁷. One informant reports that the attitudes in Finland towards Sámi LGBTIQ persons differ in many ways

⁹⁰⁴ Further discussion on the Sámi culture of silence in the chapter 6.3.1. of this report.

⁹⁰⁵ Workshops in Inari on 3.5.2017 and 17.8.2017.

⁹⁰⁶ Workshop in Inari in Sajos 3.5.2017.

⁹⁰⁷ See e.g. YLE, "Historioitsija: Entisajan saamelaiset sietivät hyvin homoseksuaalisuutta", 27.1.2016. Available at: <https://yle.fi/uutiset/3-8626978>; YLE, "Pussaavat saamelaismiehet liikaa joillekin", 22.7.2016, Updated 21.8.2017. Available at: <https://yle.fi/uutiset/3-9044139>.

from the situation of the Sámi living in other Nordic countries, and the person views the Sámi in Finland as lagging behind in queer matters, compared to the situation in Norway and especially of that in Sweden. According to the informant's view, this may partly be influenced by the development of state politics, which is subsequently also reflected in the Sámi community.

6.7.3.2. *Discrimination among sexual and gender minorities*

The informants also recount in-group discrimination occurring within sexual and gender minorities. Two informants describe their sexual and/or gender identity as having been questioned by persons belonging to a Western sexual and/or gender minority. LGBTIQ persons are frequently expected to look a certain way or possess a specific style and, if a person does not meet these expectations, it can lead to the authenticity of their identity being questioned.

Furthermore, one informant reports that it may not always be possible, in Western LGBTIQ communities, to openly bring up all the issues concerning, for example, the cultural differences between the Sámi community and the mainstream population, since that may lead to negative comments from people belonging to the majority population. One informant also mentions their loneliness, specifically as a city-dwelling Sámi person who belongs to a sexual and gender minority, because there are few people with the same cultural background in the LGBTIQ communities. The person feels that a non-Sámi may not necessarily understand the significance of their background. In the last two examples, it is again possible to observe in the participants' experiences the intersectionality of Sámi identity and belonging to a sexual and / or gender minority.

6.8. Ways to prevent discrimination in the Finnish community and to support persons having suffered discrimination, that were raised in the interviews and workshops

During the interviews, the informants were asked to reflect on ways and means to prevent discrimination against Sámi persons identifying as a sexual and/or gender minorities in the future and to support the persons who have already

suffered discrimination. The suggestions collected in the interviews and workshops are introduced next.

The school institution and education in general is perceived as having a large role and significance in the promotion of the anti-discriminatory work in Finnish society. Schools are currently seen as strongly promoting, in a multitude of ways, a heteronormative educational model, both in teaching and otherwise, for example, through the use of gender divided facilities in schools. Informants suggest that, for example, in dealing with matters related to sexual health in the context of basic education, as well as in other settings, the LGBTIQ perspective should be integrated more, and the students should also be given examples dealing with representatives of sexual and gender minorities. One informant considers that, if attitudes and behaviours were to change in schools, it would certainly also be reflected in homes and elsewhere in society. This is seen as supporting a genuine possibility for people to self-identify. Gender divided sports classes are also seen as maintaining heteronormative paradigms, and abandoning it would have a positive influence on the position of LGBTIQ persons. In addition to basic education, other youth work and free time activities are considered to have a strong significance in the promotion of anti-discriminatory work and in raising awareness in society.

General awareness-raising is seen as having a positive significance from the perspective of improving the position of sexual and gender minorities and the work against discrimination. Awareness-raising could take place for example by way of supporting and financing different training sessions and events where matters would be discussed openly and sexual and gender minority issues would be brought up in a natural manner. In events organised by persons belonging to sexual and gender minorities the internal minority groups within the minority, and issues concerning them, could also be further highlighted. This way it would be possible to have representatives of the internal minority groups within the minority gather together and discuss matters concerning them and possibly offer peer support to each other. One informant proposes that LGBTIQ communities could bring attention to the representatives of a minority (in this case the Sámi) who have carried out important work around the topic and who, while being discussed in a positive light, could also encourage others.

Arranging communal spaces for LGBTIQ Sámi would promote anti-discrimination work and support persons who have already suffered discrimination. For Sámi representatives of sexual and gender minorities, there are currently no safe communal spaces where they could discuss and determine the matters they themselves see as important in anti-discrimination work. In addition, such spaces would offer people an opportunity to exchange experiences and thoughts amongst each other, and this way also to support the persons who have already suffered discrimination.

Establishing and funding a pan-Nordic association is regarded as important because it would help Sámi representatives of sexual and gender minorities to jointly promote their own affairs. The Sámi living in Russia should also be included in the association, but one informant suspects that this might not be possible, due to the current situation of sexual and gender minorities living in Russia. Moreover, supporting various events such as Sápmi Pride and projects related to young LGBTIQ persons, including financial support, is seen as having a positive effect in awareness-raising and anti-discrimination work concerning the minorities in question.

The role of media, particularly social media, is perceived as significant in the interviews and workshops⁹⁰⁸. Through them, it is possible to convey to people a positive image of both the Sámi and the representatives of sexual and gender minorities. They are also considered to have an important position in the advocacy work to promote anti-discriminatory education.

Changes to legislation and especially to the Act on legal recognition of the gender of transsexuals⁹⁰⁹ are raised as a very important anti-discrimination measures. The participants also long for improvements to the legislation concerning the position of the Sámi, for example in relation to the practice of traditional livelihoods and the realisation of language rights.

Supporting research on and carried out by persons belonging to a Sámi sexual and gender minority would assist the strengthening and realisation of the community identity, both for the persons themselves and in the Sámi

⁹⁰⁸ Workshops in Inari 3.5.2017 and 17.8.2017.

⁹⁰⁹ 563/2002.

community. Researching and studying the history of LGBTIQ Sámi is also viewed as important and empowering a minority group within the minority.

The development of social services and health care is seen as very important. In general, increasing Sámi language social services and healthcare is viewed as significant, especially for native Sámi speakers. The Sámi territory in Finland is also considered to have a lot of room for improvement in the provision of basic health care services. Mental health services should be developed and the service provider should ensure adequate training of personnel. According to the informants, staff members possessing both knowledge of Sámi culture and expertise of sexual and gender minorities is not presently available, at least not in their case. Staff should otherwise also receive training and efforts should be made to increase their capacity to understand internal minority groups within minorities.

According to one informant, **supporting art on sexual and gender minorities and made by persons belonging to such minorities** is important because art is an effective means to discuss issues experienced by persons belonging to those minorities and also to render those issues understandable to outsiders.

Taking measures against racism was raised especially in the workshop organised in Inari⁹¹⁰. The recently increased strengthen of extreme right-wing movements is perceived among Sámi persons identifying as sexual and gender minorities as threatening, and thus intervening in and prohibiting all racist activity is seen as important.

⁹¹⁰ Workshop in Inari in Hotel Kultahovi on 17.8.2017. In the workshop the rise of neo-Nazism and one participant's experience of having been a victim of physical assaults by representatives of the said group were discussed. The person referred to the group in question with the term Nazi.

6.9. Conclusions and recommendations concerning the implementation of the human rights of Sámi persons identifying as sexual and gender minorities and the prevention of the multiple discrimination they face

6.9.1. Discrimination faced by Sámi persons identifying as a sexual and/or gender minority

Representatives of Sámi persons identifying as sexual and/or gender minorities belong to two different minorities living in Finland, which places them in a special and vulnerable position in our society. The research material in this study reveals that they encounter discrimination on many grounds, in a variety of forms, based both on Sámi identity as well as on sexual identity, gender identity and gender expressions. As highlighted in the chapter on persons with disabilities, simply expressed, multiple discrimination refers to discrimination, which is directed at the individual on a variety of grounds.⁹¹¹ Multiple discrimination is often divided into sequential multiple, cumulative and intersectional discrimination⁹¹². Experiences of in-group and out-group discrimination emerge as clearly distinct in the accounts of the informants.

For example, the interviews reveal experiences of intersectional discrimination, in which belonging to two minority groups renders them subject to specific experiences of discrimination. Representatives of sexual and/or gender minorities belonging to the majority population, or Sámi who do not belong to sexual and/or gender minorities, will not face the same challenges in their lives. For this reason, these situations are classified in this study as intersectional discrimination.⁹¹³

Experiences of intersectional discrimination strongly reflect a certain kind of voicelessness of Sámi persons identifying as a sexual and/or gender minority in society. Persons belonging to an internal minority of the minority in question are relatively few in number, as a result of which, not much is known and there is

⁹¹¹ Makkonen (2003), p. 13-14; Fredman (2016), p. 27-28; Aaltonen et al. (2009), p. 19; Makkonen (2002), p. 9-10. See in more detail chapter 3. of this report on multiple discrimination.

⁹¹² See for more detail chapter 3.2.

⁹¹³ See the definitions of multiple discrimination in more detail in chapter 3.2. of this report.

hardly any research data on their position available in Finland. In the case of Sámi sexual and gender minorities, the lack of Sámi-speaking and culturally sensitive health and social care professionals with expertise on the situation of sexual and gender minorities is also brought up as a challenge in connection with intersectional discrimination.

Discrimination connected to Sámi identity is in some situations caused by problems within the structures of the Finnish society and is indirect in nature. One example of this is the lack of Sámi language and culturally sensitive social and health care services. Often it is also possible to see the attitudes of the majority population towards the Sámi in general as the background of discrimination. The attitudes are not always directly negative but the general ignorance of the majority population regarding Sámi culture, their history and their rights, have an underlying influence. In the case of the informants, ignorance is causing situations where they themselves or their privacy are not respected. Additionally, the informants feel that recent actions by the Finnish state, such as the ratification of the Tenojoki fishing agreement and the restrictions in the new fishing legislation, undermine their rights as an indigenous people.

Experiences of discrimination caused by belonging to a sexual and gender minority are frequently connected to problems in legislation. For example, the Act on legal recognition of the gender of transsexuals contains provisions which can be regarded as discriminatory, as will be explained in detail later. In addition, the research material brings to light other examples of structural discrimination which can be seen as having their foundation in the relatively heteronormative values of the Finnish society. Direct harassment and hate speech primarily appears on social media and on various audience comment sections.

Discrimination experienced by sexual and gender minorities in the Sámi community is in many ways connected to the patriarchal characteristics of the present-day Sámi community and to the roles of women and men in the community. Especially within communities practicing traditional livelihoods, gender roles are still considered to be fairly strong and clear. As a result, the position of persons belonging to sexual and / or gender minorities within such communities is sometimes perceived as challenging. The clear gender divide in *gákti* raises a great deal of discussion among the informants and the research

material contains reflections of e.g. what kind of clothing non-binary Sámi could wear.⁹¹⁴

Sexual and gender minorities are not a new issue among the communities of indigenous peoples but, as highlighted in this study as well, attitudes towards them seem to have varied across time. The changes in attitudes appear to be connected to the spread of Western thinking, but the spread of Christianity has also had an impact on the creation of current strong gender roles in the Sámi community.⁹¹⁵

The research carried out earlier emphasizes the silence associated with sexual and gender minorities among the Sámi.⁹¹⁶ Silence can be seen as meaning various things, and it can communicate both acceptance and disapproval of a matter⁹¹⁷. Silence is also seen in some contexts as having become a kind of norm among the Sámi⁹¹⁸, and one informant refers to a culture of silence within the community. A part of the informants in our study also choose in some situations to stay silent on their sexual and/or gender identity because they are afraid of, for example, the reactions of outsiders.⁹¹⁹

⁹¹⁴ See in more detail about the experiences of discrimination that came up in the interviews of the study in chapter 6.7.3.1. of this report.

⁹¹⁵ See e.g. Medicine, Beatrice, "Directions in Gender Research in American Indian Societies: Two Spirits and Other Categories", *Online Reading in Psychology and Culture*, 3(1), (2002). Available at: <http://scholarworks.gvsu.edu/orpc/vol3/iss1/2/>. Lang, Sabine, *Men as Women, Women as Men. Changing Gender in Native American Cultures*, USA: The University of Texas Press, (1998); Willimas, Walter L. *The 'Two-Spirit' People of Indigenous North Americans, First People*. Available at: <http://www.firstpeople.us/articles/the-two-spirit-people-of-indigenous-north-americans.html>; Wallace, Lee, "Homoseksuaalisuuden löytäminen: kulttuurien välinen vertailu ja seksuaalisuuden historia", in Aldrich Robert (ed.), *Rakkaus samaan sukupuoleen*, (transl. by Ketola, Veli-Pekka). Multikustannus Oy, (2006); Kuokkanen, Rauna, "Sámenissonat, árbevierru ja veahkaválddi hámit", *Sámi dieđalaš áigečála* 1(2008).

⁹¹⁶ See e.g. Bergman & Linqvist (2014); Mattanen (2016); Løvold (2014); Grønningseter & Nuland (2009).

⁹¹⁷ Mattanen (2016), p. 37-38. See also Løvold (2014), p.39-51.

⁹¹⁸ Mattanen (2016), p. 28 & 32.

⁹¹⁹ See also in more detail page 224 of this report.

6.9.2. Promoting the rights of Sámi sexual and gender minorities in Finland

The status of sexual and gender minorities in Finland's international human rights policy has been strengthened starting with the first Human Rights Report in 1998⁹²⁰. Since then, these minority groups have retained and strengthened their position in both national and international human rights policies of Finland and the elimination of discrimination against them has been highlighted as one of the key objectives. However, research data related to the rights of Sámi persons identifying as sexual and/or gender minorities have not been produced in Finland even though, as a minority group within a minority, they are at a particular risk of multiple discrimination⁹²¹. This should be taken into account in the policies promoting the rights and status of sexual and gender minorities advocated by Finland.

As pointed out in this research report, the equality provision in Section 6 of the Constitution applies equally to persons belonging to sexual and gender minorities even though, unlike persons with disabilities, they are not specifically mentioned as a target group of the prohibition of discrimination. Even though the Constitution does not recognise the concept of multiple discrimination, it must be noted in the implementation of fundamental rights that, in the case of Sámi persons identifying as sexual and gender minorities, the equality provision lays down a positive obligation to take measures for the realisation of the rights of both Sámi and LGBTIQ persons. With regard to the Sámi, the equality rule must also be read in conjunction with Section 17.3 of the Constitution, which means for example an obligation to implement linguistic and cultural rights in the social and health services of Sámi LGBTIQ persons.

The Non-Discrimination Act specifically mentions sexual orientation as one of the grounds of discrimination. Even though gender minorities are not specifically

⁹²⁰ Tarjamo, Kerttu, Selvitystyö ulkoasiainministeriön toiminnasta LHBTI-ihmisoikeuksien edistämiseksi. 22.12.2012, 7; Report by Minister for Foreign Affairs Tarja Halonen to the Foreign Affairs committee of the Parliament on the human rights policy of Finnish government 11.11.1998.

⁹²¹ See in more detail on the position of sexual and gender minorities in Finland's human rights policy in chapter 6.4. of this report.

mentioned in the Act, the prohibition of discrimination applies to them equally as well. The Equality Act requires authorities to prevent discrimination on grounds of gender identity or gender expressions in a purposeful and systematic manner. The Equality Act prohibits both direct and indirect discrimination.

Multiple discrimination should be recognised in non-discrimination legislation. The often unequal position of minority groups within minorities should be recognised in the preparation of legislation and in equality and non-discrimination plans and other programmes of action promoting equality, which should also take into account specific groups in danger of multiple discrimination, such as Sámi LGBTIQ persons.

Separate human rights instruments do not exist for sexual and gender minorities. Although general human rights protecting all people naturally apply to all LGBTIQ persons, including Sámi persons belonging to sexual and gender minorities, they are not fully implemented in practice, due to attitudinal and structural factors and lack of correct information. However, the Yogyakarta principles drafted in 2007 make it clear on the basis of existing human rights agreements that universal human rights are common to all people in the world, including sexual and gender minorities. Thus, the purpose of the principles is to guarantee the human dignity of LGBTIQ persons without any room for political interpretation.⁹²² The bodies monitoring human rights agreements have also adopted statements on the rights of sexual and gender minorities and confirmed that the agreements provide equal protection for persons belonging to the abovementioned groups, in line with the equality principle. The rights of Sámi LGBTIQ persons are protected under two different human rights standards: on the one hand, all human rights apply to them on an equal basis and, on the other hand, also the rights of indigenous peoples. The participation of all internal minorities should be taken into account in the implementation of the participation rights of the Sámi, so that their voice would be heard as part of the advancement of Sámi rights. In the implementation of the participation rights of indigenous

⁹²² Väisänen, Mikko, Mitä ovat Yogyakartaan periaatteet? Finnqueer, http://www.finnqueer.net/juttu.cgi?s=310_5_1. For a more detailed analysis of the Yogyakarta principles, see, O' Flaherty, Michael, Fisher, John, Sexual Orientation, Gender Identity and International Human Rights, Contextualizing the Yogyakarta Principles, *Human Rights Law Review*, Volume 8, Issue 2, 1 January 2008: 207–248.

peoples, the views of the indigenous people themselves regarding who are considered as representing the people in question must be taken into account. However, participatory practices must not discriminate against individual or internal groups.

The European Court of Human rights (ECHR) has ruled that requiring infertility as a precondition for legal recognition of gender constitutes a violation of human rights. The case also places a legal obligation in Finland to amend legislation to comply with the human rights obligations in the European Convention on Human Rights. According to Section 1 of the Act on legal recognition of the gender of transsexuals, “a person can be legally recognised to belong to the gender opposite to that according to which he or she is recorded in the population information system referred to in the Population Information Act if he or she presents a medical statement stating that he or she permanently feels to belong to the gender opposite to that assigned to him or her and lives in that gender role, and that he or she has been sterilised or is for some other reason infertile.” The Act also requires the person to have reached the age of majority.

A working group of the Ministry of Social Affairs and Health gave the suggestion on the abolition of the infertility requirement, included in a government bill drafted in 2015. The working group also suggested to research the possibility to amend the legislation to the effect that a person could receive legal recognition for their gender without the requirement to present a medical statement on transsexuality.⁹²³ In a similar vein, the working group also proposed that it might be justified to re-examine the requirement of reaching the age of majority as a precondition for legal recognition of gender, in connection with the research. The study should take into account the best interests of minors and their right to decide on matters concerning them in line with their age and level of development, as well as their right to special care and protection of health and development, while their development is still unfinished.⁹²⁴ The working group further presented that the title of the Act should be changed to “the Act on the legal recognition of gender”.⁹²⁵ Among others, Seta and Trasek as well as many other human rights

⁹²³ Sukupuolen oikeudellisen vahvistamisen edellytykset, Työryhmän loppuraportti, Sosiaali- ja terveysministeriön raportteja ja muistioita 23/2015.

⁹²⁴ Ibid., p. 12-13.

⁹²⁵ Ibid., p. 17.

organisations considered in their statements relating to the proposal on the amendment of the Transgender Act that the right of a transsexual person to self-determination requires the legal recognition of gender to be separated from medical procedures on gender reassignment. Instead, Finland should employ a process in which a person's gender is confirmed on the basis of their own notification.⁹²⁶ According to the organisations, the current practice which requires a person seeking the legal recognition of gender to go through a long and physically, as well as mentally demanding medical process, in which a doctor decides on their identity, can be seen as a violation of the right to self-determination.⁹²⁷

As noted in the presentation of the Ministry of Social Affairs and Health working group, the possibility to legally recognise gender on the basis of the person's own report should be examined in light of the Constitution.⁹²⁸ In addition to the principles of equal treatment and non-discrimination in Section 6, at least the right to personal liberty, integrity and security laid down in Section 7 and the protection of private life under Section 10 of the Constitution have a central role. The right to self-determination can be considered as belonging to our fundamental rights system as part of the general right to personal liberty and integrity. The joint statement given by the Ombudsman for Equality and the Non-Discrimination Ombudsman in 2016 also states that the current Transgender Act violates the right of transgender persons to equality, personal integrity and private and family life and infringes the right to self-determination.⁹²⁹

Among the Nordic countries, in Denmark and Norway it is possible to change gender on the basis of a person's own notification, and Sweden has also abolished the requirement of infertility. This study recommends the amendment of transgender legislation with a view to full implementation of the fundamental and

⁹²⁶ See the joint statement of human rights organisations, <http://seta.fi/ihmisoikeusjarjestot-vaativat-itsemaaramisoikeus-sukupuoleen-lakiuudistuksen-lahtokohdaksi/>; Seta ry:n ja Trasek ry:n lausunto sosiaali- ja terveystieteiden neuvottelukunnalle. Asia: Tarve 'transseksuaalin sukupuolen vahvistamisesta' annetun lain saattamiseen ajan tasalle 14.4.2013., <http://seta.fi/setan-ja-trasekin-lausunto-sosiaali-ja-terveysalan-eettiselle-neuvottelukunnalle/>.

⁹²⁷ <http://seta.fi/miesparin-raskausuutinen-konkretisoi-translain-ongelmia/>.

⁹²⁸ Sukupuolen oikeudellisen vahvistamisen edellytykset, Työryhmän loppuraportti, Sosiaali- ja terveysministeriön raportteja ja muistioita 23/2015, p. 20.

⁹²⁹ The joint statement given by the Ombudsman for Equality and the Non-Discrimination Ombudsman <https://www.tasa-arvo.fi/-/translaki-on-uudistettava-valittomast-1>

human rights of transgender persons. In addition to the abolition of the infertility requirement, the right to self-determination requires the right of a person to change gender on the basis of the person's own admission without linking it to a medical certificate. The title of the Transgender Act should be changed in line with the proposed "Act on the legal recognition of gender". The age criterion should also be investigated and considered for removal in the legal recognition of gender, taking into account the child's age and level of development. In Norway, for example, those aged 16 or older can have their gender legally corrected based on their own notification. Those aged between 6 and 16 can also receive gender reassignment treatments and have their gender legally recognised with the permission of their parents.

Families of Transgender Children and Young People points out that currently, transgender outpatient clinics only give access to puberty blocker treatment used to postpone puberty from the age of 16, while in reality puberty often starts significantly earlier.⁹³⁰ Earlier access to blocker treatment should be considered, because it could help avoid e.g. the permanent change of the voice of transgender girls and unnecessary surgical operations as well as social and psychological problems.

Treatment practices of intersex children are also problematic to the extent that children are subjected to irreversible operations without medical justifications.⁹³¹ These should also be abolished at least until such time that the child can by themselves determine their own gender and express their will to undergo reassignment surgery.

Organisations representing gender minorities⁹³² have expressed their concern over the effects of the draft name bill (HE 104/2017 vp),⁹³³ recently issued by the government on gender minorities and which, at the time of writing, is still under consultation. According to the Government bill, a name can be approved

⁹³⁰ Aapalahti, Riikka, <http://www.raapalahti.fi/2017/06/translasten-ja-nuorten.html>

⁹³¹ Ibid.

⁹³² Trasek, Seta, Dreamwear Club and Translasten ja -nuorten perheet ry., See <http://trasek.fi/>.

⁹³³ The Government bill, HE 104/2017 vp., to the parliament on the Names Act and on the Act amending sections 8 and 9 of the Act on registered partnerships. Hallituksen esitys eduskunnalle etu- ja sukunimilaiksi ja laiksi rekisteröidystä parisuhteesta annetun lain 8 ja 9 §:n muuttamisesta.

as a forename if it has been established for the same legal gender. Derogations from the gender rule would be possible on the basis of an applicant's gender identity, if the applicant presents a reliable certification of their gender identity. The organisations express concern that, if the authority competent for deciding on the name is given discretion to evaluate the authenticity of gender identity, decisions may vary to the extent that it results in discrimination on grounds of gender identity or gender expressions prohibited in the Equality Act. The concern of the organisations appears justified and it should be taken into account prior to the final approval of the law. If the proposed discretion remains in the law, sufficiently clear application guidelines should be drafted in order to ensure consistent administrative practice.⁹³⁴

On the basis of a citizens' initiative, in December 2014 the parliament adopted an amendment to the Marriage Act which allows persons of the same sex to marry. The amended legislation allows same-sex married couples to adopt a child together. Same-sex parents of a child born in marriage are not, however, both directly recognised as parents of a child under the law. In other words, the so-called presumption of paternity does not apply to same-sex married couples. The legal recognition of the maternity of the second mother still requires her to adopt the child (so-called "adoption inside a family" in Finnish law). The citizens' initiative on maternity law currently under discussion in the Parliament would, in certain situations, enable the recognition of maternity by admission, already at the maternity clinic before the birth of the child. Although adoptions outside of a family are possible for same-sex couples, in practice they are made difficult by the fact that Finland does not have comprehensive connections to countries and organisations that would place children into the families of female or male same-sex couples. In Finland as well, the parents giving their child up for adoption may have an influence on the choice of the adoptive family. An open dialogue between states and bringing up the issue of adoption in a more visible manner in Finland's human rights policies could contribute to increasing the possibilities for same-sex families to adopt outside the family.

⁹³⁴ The chair of Trasek Panda Eriksson also proposes this. See <http://trasek.fi/>.

6.9.3. Elimination and prevention of discrimination faced by Sámi persons identifying as sexual and gender minorities at the level of practical action

Our study examines ways to prevent discrimination against Sámi sexual and gender minorities and to help people who have already faced discrimination. One of the most important tools emerging in this work is increasing fact-based knowledge concerning all sexual and gender minorities and the discrimination they are facing. Awareness should be raised in all sectors of society and decision-making, for example by supporting and funding research, different training events and campaigns in which information would be transmitted on a factual basis and matters would be subject to open discussion. At present, schools are also still often promoting a heteronormative educational model e.g. in teaching, and the informants of our study emphasize that the LGBTIQ perspective should be included more in curriculum already at the level of basic education.

LGBTIQ Sámi should be provided with common and safe spaces to meet other persons in the same situation, share their experiences, and also discuss matters that they themselves perceive as important in anti-discrimination work. The informants in our project also believe that the establishment of a new pan-Nordic LGBTIQ Sámi association would be important and sufficient resources should be available for its work so that all the human resources of the association would not be spent on a continuous search for funding. More resources should also be directed to supporting different events such as those highlighting the rights of LGBTIQ Sámi.

The development of culturally sensitive social and health care services taking into account also the situation of sexual and gender minorities and provided in the Sámi languages is critically important. Informants point out that, at present, care personnel with expertise on both Sámi culture and its special characteristics as well as on matters concerning sexual and gender minorities is not available, for example, within mental health services.

The media is seen to play a big part in the creation of a positive and tolerant atmosphere. The media has a big role in advocacy work and it can also contribute to promoting educational anti-discrimination work in society. In addition,

effective intervention should be made in relation to all kinds of racism appearing in society.

There is extremely little research conducted regarding Sámi persons belonging to sexual and gender minorities. There is for example no research available on the history of queer Sámi, and for this reason, it is difficult to evaluate what the status of sexual and gender minorities in Sámi communities have been in the past. Research on the subject would thus be necessary, and should also specifically be conducted by queer Sámi persons themselves.

Transgender persons and gay men emerge in the study as particularly silent internal sexual and gender minority groups among the Sámi living in Finland, and the improvement of their position should receive attention in the future, in order to realize the principles of equality and non-discrimination.

References

Interviews

During this research project we did all together eight interviews between 24.4.2017 – 16.8.2017. In these interviews there are interviews with Sámi people with disabilities and with Sámi who identify themselves to belong to sexual and gender minorities. Interviews were conducted and transcribed by Laura Olsén. They will be filed in the locked archives of the Arctic Centre, University of Lapland so that all the security criterion will be fulfilled.

Interview, SámiSoster ry, Ristenrauna Magga, 20.6.2017.

Interview, SámiSoster ry, Ristenrauna Magga, 13.9.2017.

Interview, Kalle Könkkölä, 18.9.2017.

Email discussion with the Skolt Sámi language employee in Giellagáldu, 11.9.2017.

Email discussion with the Inari Sámi language employee in Giellagáldu, 9.10.2017.

Email discussion with the North Sámi language employee in Giellagáldu, 11.10.2017.

Workshop in Inari, Sajos 3.5.2017.

Workshop in Inari, Hotel Kultahovi 17.8.2017.

Legislation

13.6.1929/234 Marriage Act, 17 a § complemented 25.8.2016/695.

239/1970 Act on Termination of Pregnancy.

36/1973 Act on Children's Day Care.

700/1975 Paternity Act.

519/1977 Act on Special Care for Persons with Intellectual Disabilities.

361/1983 The Act on Custody of a Child and Access.

153/1985 Act on Child Adoption, repealed with the Adoption Act 22/2012.

694/1985 Names Act.

609/1986 Act on Equality between women and men, 7 § Complemented concerning sexual identity and gender expression 30.12.2014/1329.

759/1987 Decree on services and support measures provided on the basis of disability.

39/1889 Criminal Code of Finland.

785/1992 Act on the Status and Rights of Patients.

201/1994 Act on the Municipality of Residence

253/1995 Skolt Act.

974/1995 Act on Sámi Parliament.

628/1998 The Basic Education Act.

629/1998 Upper Secondary Schools Act.

132/1999 Land Use and Building Act.

731/1999 Constitution of Finland.

950/2001 Act on Registered Partnerships.

486/2002 Act on European Social Charter, Laki uudistetun Euroopan sosiaalisen peruskirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta.

563/2002 Act on legal recognition of the gender of transsexuals.

1086/2003 The Sámi Language Act.

21/2004 Non-Discrimination Act.

566/2005 Act on National Insurance Institution rehabilitation benefits and rehabilitation allowances.

72/2006 Youth Act.

217/2007 Taxi Transport Act.

417/2007 Child Protection Act.

695/2009 Act on Qualifications of a Taxi Driver.

133/2010 Act on Interpreting Services for Persons with Disabilities.

1326/2010 Health Care Act.

1377/2010 Act amending the Municipality of Residence Act.

1378/2010 Social Welfare Act.

460/2013 Government decree on prices of taxi transport.

1236/2014 Act amending the Act on National Insurance Institution rehabilitation benefits and rehabilitation allowances.

1325/2014 Non-discrimination Act.

1329/2014 Act on Amending the Act on Equality between women and men.

145/2015 Act amending the Act on National Insurance Institution rehabilitation benefits and rehabilitation allowances.

379/2015 Fishing Act.

246/2016 Act amending the Act on Marriage.

381/2016 Act amending the Act on Special Care for Persons with Intellectual Disabilities.

1344/2016 Act amending the Act on National Insurance Institution rehabilitation benefits and rehabilitation allowances.

1397/2016 Act on Public Procurement and Concession Contracts.

176/2017 Tana Fishing Agreement, Laki kalastuksesta Tenojoen vesistöissä Norjan kanssa tehdyn sopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja soveltamisesta.

SopS 24/1986 (Finnish treaty series), Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), Entry into force: 20 Jun 1985. Asetus ammatillista kuntoutusta ja työllistämistä (vajaakuntoiset henkilöt) koskevan yleissopimuksen voimaansaattamisesta.

Sops 68/1986 (Finnish treaty series) Convention on the Elimination of All Forms of Discrimination against Women 18.12.1979.

SopS 59/1989 (Finnish treaty series) Convention on the Elimination of All Forms of Discrimination against Women 18.12.1979.

SopS 59/1989 (Finnish treaty series) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; SopS 60/1989, Asetus kidutuksen ja muun julman, epäinhimillisen tai halventavan kohtelun tai rangaistuksen vastaisen yleissopimuksen voimaansaattamisesta sekä yleissopimuksen eräiden määräysten hyväksymisestä annetun lain voimaantulosta.

Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) SopS 18–19/1990 (Finnish treaty serie); as subsequently amended SopS 71 and 72/1994, SopS 85 and 86/1998, SopS 8 and 9/2005, SopS 6 and 7/2005 and SopS 50 and 51/2010.

SopS 59/1991 (Finnish treaty series) Laki lapsen oikeuksia koskevan yleissopimuksen eräiden määräysten hyväksymisestä; SopS 60/1991 (Finnish treaty serie) UN Convention on the rights of the child 20.11.1989.

SopS 103/1994 (Finnish treaty series) The treaty on Finland's accession to the European Union.

Sops 23/1998 (Finnish treaty series) European Charter for Regional or Minority Languages.11.1992.

SopS 85-86/1998 (Finnish treaty series) Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11.

Sops 63/1999 (Finnish treaty series) European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms) as amended by the provisions of Protocol No. 11 (SopS 85-86/1998).

Finnish-Norwegian-Swedish-Sámi expert working group, Draft for the Nordic Saami Convention, Suomalais, norjalais, ruotsalais, saamelaisen asiantuntijatyöryhmän 27.10.2005 luovuttama luonnos Pohjoismaiseksi saamelaisopimukseksi. Online at:

https://www.regjeringen.no/globalassets/upload/aid/temadokumenter/sami/sami_samskonvensjonen_finsk_h-2183-f.pdf. (Accessed 20.11.2017)

SopS 92-93/2014 (Finnish treaty series) UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Optional Protocol, 7.11.2014.

SopS 53/2015 (Finnish treaty series), The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 11.8.2014. Valtioneuvoston asetus naisiin kohdistuvan väkivallan ja perheväkivallan ehkäisemisestä ja torjumisesta tehdyn Euroopan neuvoston yleissopimuksen voimaansaattamisesta sekä yleissopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta annetun lain voimaantulosta.

SopS 5/2016 (Finnish treaty series), Optional Protocol to the Convention on the Rights of the Child on a communication procedure, GA resolution A/RES/66/138 of 19 December 2011, entered into force on 14 April 2014. Valtioneuvoston asetus lapsen oikeuksia koskevan yleissopimuksen valitusmenettelyä koskevan valinnaisen pöytäkirjan voimaansaattamisesta ja pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta annetun lain voimaantulosta.

SopS 27/2016 (Finnish treaty series), The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106), adopted on 13 December 2006, entered into force on 3 May 2008. Valtioneuvoston asetus vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan voimaansaattamisesta sekä yleissopimuksen ja sen valinnaisen pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta annetun lain voimaantulosta.

Government Bill

HE 309/1993. Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta.

HE 248/1994. Hallituksen esitys Eduskunnalle saamelaisten kulttuuri-itsehallintoa koskevien säännösten ottamisesta Suomen Hallitusmuotoon ja muuhun lainsäädäntöön.

HE 245/1997. Hallituksen esitys Eduskunnalle Euroopan unionista tehdyn sopimuksen, Euroopan yhteisöjen perustamissopimusten ja niihin liittyvien tiettyjen asiakirjojen muuttamisesta tehdyn Amsterdamin sopimuksen eräiden määräysten hyväksymisestä.

HE 1/1998. Hallituksen esitys eduskunnalle Suomen uudeksi hallitusmuodoksi.

HE 56/2001 vp. Hallituksen esitys eduskunnalle laiksi sukupuolen vahvistamisesta eräissä tapauksissa ja eräksi siihen liittyviksi laeiksi.

HE 169/2001 vp. Hallituksen esitys Eduskunnalle vammaisten ja vajaakuntoisten henkilöiden työllistymistä edistäväksi lainsäädännöksi.

HE 229/2001 vp. Hallituksen esitys eduskunnalle uudistetun Euroopan sosiaalisen peruskirjan hyväksymisestä ja laiksi sopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta sekä laiksi Euroopan sosiaalisen peruskirjan ja siihen liittyvän lisäpöytäkirjan eräiden määräysten hyväksymisestä annetun lain kumoamisesta.

HE 46/2003 vp. Hallituksen esitys eduskunnalle saamen kielilaeiksi.

HE 19/2014. Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräksi siihen liittyviksi laeiksi. (Government Bill to the Parliament for the Non-discrimination Act and certain related Acts, section 3: Objectives and key propositions in the Bill.)

HE 108/2014 vp. Hallituksen esitys eduskunnalle laiksi sosiaalihuollon asiakkaan ja potilaan itsemääräämisoikeuden vahvistamisesta ja rajoitustoimenpiteiden käytön edellytyksistä sekä eräksi siihen liittyviksi laeiksi.

HE 167/2014 vp. Hallituksen esitys eduskunnalle laeiksi saamelaiskäräjistä annetun lain ja rikoslain 40 luvun 11 §:n muuttamisesta.

HE 264/2014 vp. Hallituksen esitys eduskunnalle itsenäisten maiden alkuperäis- ja heimokansoja koskevan yleissopimuksen hyväksymisestä sekä laeiksi yleissopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja Metsähallituksesta annetun lain muuttamisesta.

HE 284/2014. Hallituksen esitys eduskunnalle vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan hyväksymisestä sekä laeiksi yleissopimuksen ja sen valinnaisen pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja eduskunnan oikeusasiamiehestä annetun lain muuttamisesta.

HE 65/2015. Hallituksen esitys eduskunnalle eräksi avioliittolain muutoksen edellyttämiksi lainmuutoksiksi.

HE 96/2015 vp. Hallituksen esitys eduskunnalle laiksi kehitysvammaisten erityishuollosta annetun lain muuttamisesta.

HE 44/2017 vp. Hallituksen esitys eduskunnalle laiksi saamen kielilain muuttamisesta.

HE 104/2017 vp. Hallituksen esitys eduskunnalle etu- ja sukunimilaiksi ja laiksi rekisteröidystä parisuhteesta annetun lain 8 ja 9 §:n muuttamisesta.

Hallituksen esitys eduskunnalle laeiksi vammaisuuden perusteella järjestettävistä erityispalveluista sekä sosiaalihuoltolain muuttamisesta, LUONNOS 17.5.2017 lp.

Parliament's Committees statements and memorandums

PeVM 12/1990 vp. Perustuslakivaliokunnan valtiopäiväjärjestyksen 52 a §:stä antama mietintö.

PeVM 25/1994 vp. Perustuslakivaliokunnan mietintö n:o 25 hallituksen esityksestä perustuslakien perusoikeussäännösten muuttamisesta.

PeVL 38/2004 vp. Perustuslakivaliokunnan lausunto hallituksen esityksestä laiksi Metsähallituksesta.

TyVM 3/2005 vp. Työelämä- ja tasa-arvovaliokunnan mietintö hallituksen esityksestä laiksi naisten ja miesten välisestä tasa-arvosta annetun lain muuttamisesta.

PeVM 13/2014 vp. Perustuslakivaliokunnan mietintö Hallituksen esityksestä eduskunnalle itsenäisten maiden alkuperäis- ja heimokansoja koskevan yleissopimuksen hyväksymisestä sekä laeiksi yleissopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja Metsähallituksesta annetun lain muuttamisesta.

LaVM 14/2014 vp- M 10/2013 vp, Lakivaliokunnan mietintö Kansalaisaloitteesta eduskunnalle avioliittolain, rekisteröidystä parisuhteesta annetun lain ja transseksuaalin sukupuolen vahvistamisesta annetun lain muuttamisesta (KAA 3/2013 vp).

PeVL 52/2014 vp. Perustuslakivaliokunnan lausunto Valtioneuvoston ihmisoikeusselonteosta.

Other statements, proposals and citizens' initiatives

ETENE lausunto transseksuaalin sukupuolen vahvistamisesta annetun lain muutostarpeet, STM 5023/2012, 17.4.2013.

ETENE opinion on the treatment of intersexual children 4.4.2016. Online at: <http://etene.fi/lausunnot-ja-kannanotot-2016>. (Accessed 20.11.2017)

Intersex Awareness Day 26.10.2016, End violence and harmful medical practices on intersex children and adults, UN and regional experts urge. Online at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E. (Accessed 20.11.2017)

Kansalaisaloite eduskunnalle avioliittolain, rekisteröidystä parisuhteesta annetun lain ja transseksuaalin sukupuolen vahvistamisesta annetun lain muuttamisesta, (2013), KAA 3/2013 vp. Online at: https://www.eduskunta.fi/FI/vaski/Documents/m_10+2013.pdf. (Accessed 20.11.2017)

Kansalaisaloite äitiyslaiksi, KAA 3/2016 vp.

Seta, Comment, Transihmisten ihmisoikeudet toteutettava – Translaki uudistettava, 24.6.2015. Online at: <http://seta.fi/seta/wp-content/uploads/2015/06/Kannanotto-24.6.2015-Transihmisten-ihmisoikeudet-toteutettava-translaki-uudistettava.pdf>. (Accessed 20.11.2017)

Kantola, Johanna, Lausunto koskien yhdenvertaisuustoimikunnan välimietintöä: Tasa-arvo- ja yhdenvertaisuuslainsäädännön uudistustarve ja -vaihtoehdot (2008).

Ulkoasianministeriö (2013), Vammaisten henkilöiden oikeuksista tehdyn yleissopimuksen ja sen valinnaisen pöytäkirjan voimaansaattamista valmistelleen työryhmän mietintö.

Vammaisten ihmisoikeuskomitean (VIOK) esitys Ihmisoikeuskeskukselle ja ihmisoikeusvaltuuskunnalle 20.4.2017, Ihmisoikeuskeskuksen vastaus, IOK 31/2017, 23.5.2017.

International Conventions, Treaties and Directives

A/RES/3/217 A, Resolution adopted by the General Assembly, 217 (III), Universal Declaration of Human Rights, (10.12.1948).

A/RES/2200A, International Covenant on Economic, Social and Cultural Rights, G.A. 2200A(XXI), 21 UN GAOR Supp. (No. 16), at 49, UN Doc. A/6316 (1966), adopted 16 December 1966, came into force 3 January 1976, 993 UNTS 3.

A/RES/26/2856, Resolution adopted by the General Assembly, 2856 (XXVI). Declaration on the Rights of Mentally Retarded Persons, (20.12.1971).

A/RES/30/3447, Declaration on the Rights of Disabled Persons, Proclaimed by General Assembly resolution 3447 (XXX) of (9.12.1975).

A/RES/34/180, Resolution adopted by the General Assembly, 34/180. Convention on the Elimination of All Forms of Discrimination against Women, (18.12.2979)

A/RES/37/52, World Programme of Action concerning Disabled Persons, General Assembly, (3.12.1982).

A/RES/44/25, Resolution adopted by the General Assembly, Convention on the Rights of Child, (20.11.1989)

A/RES/48/96, Standard Rules for the Equalisation of Opportunities for Persons with Disabilities, adopted by the United Nations General Assembly, forty-eighth session, resolution 48/96, annex, (20.12.1993).

Bejing Declaration and Platfrom for Action, (Pekingin julistus ja toimintaohjelma), United Nations (4-5.9.1995).

A/RES/61/106, Resolution adopted by the General Assembly, 61/106. Convention on the Rights of Persons with Disabilities, (24.1.2007).

A/RES/61/295, Resolution adopted by the General Assembly, 61/295. UN Declaration on the Rights of Indigenous Peoples, Sixty-first Session (13.9.2007).

A/HRC/RES/17/19, Resolution adopted by the Human Rights Council on Human rights, sexual orientation and gender identity, (17.6.2011).

A/HRC/RES/27/32, Resolution adopted by the Human Rights Council on Human rights, sexual orientation and gender identity, (2.10.2014).

A/HRC/RES/32/2, Resolution adopted by the Human Rights Council on 30 June 2016 on Protection against violence and discrimination based on sexual orientation and gender identity (30.6.2016).

A/HRC/RES/33/13, Resolution adopted by the Human Rights Council on September 2016 on Human Rights and Indigenous Peoples, (29.9.2016).

The Yogyakarta Principles, Principles of the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007. Online at: http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf.

European Convention on Human rights (1950).

Treaty establishing the European Economic Community, document 11957e/TXT.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

European Charter for Regional or Minority Languages (1992).

Framework Convention For The Protection of National Minorities (1995).

Revised European Social Charter (1996).

European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms) as amended by the provisions of Protocol No. 11 (SopS 85-86/1998), 63/1999.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Charter of fundamental rights of the European Union (2000/C 364/01).

Council Directive 2004/113/EC, of 13 December 2004, implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Council of Europe Convention on Action against Trafficking in Human Beings (2005).

European Parliament and Council Directive 2006/54/EC, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, Brussels, 2.7.2008 COM(2008) 426 final 2008/0140 (CNS).

Equal treatment of persons irrespective of religion or belief, disability, age or sexual orientation, European Parliament legislative resolution of 2 April 2009 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)).

Council of Europe Convention on preventing and combating violence against women and domestic violence (2011).

Parliamentary Assembly, Resolution 2048/2015, Discrimination against transgender people in Europe, Online at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>. (Accessed 20.11.2017)

Council of Europe: Committee of Ministers Resolution CM/ResCMN(2017), 15.3.2017, on the implementation of the Framework Convention for the Protection of National Minorities by Finland. (Unofficial translation into Finnish by the Ministry for Foreign Affairs 10.4.2017.)

Jurisprudence

A/HRC/34/58, s. 13, Human Rights Council, Thirty-fourth Session, 27. February-24. March 2017, Report of the Special Rapporteur on the rights of persons with disabilities, 20. December 2016.

A/HRC/34/58, Human Rights Council, Thirty-fourth Session, 27. February-24. March 2017, Report of the Special Rapporteur on the rights of persons with disabilities, 20. December 2016.

CERD: General Recommendation No. 23: Indigenous Peoples, 18. of August, 1997.

CERD/C/FIN/CO/23, Committee on the Elimination of Racial Discrimination, Concluding observations on the 23rd periodic report of Finland. (Unofficial translation into Finnish by the Ministry for Foreign Affairs 19.7.2017.)

Concluding observations on the Sixth periodic report of Finland, CCPR/C/FIN/CO/6 24.7.2013 (Unofficial translation into Finnish by the Ministry for Foreign Affairs).

Joint statement on sexual orientation, gender identity and human rights at United Nations, 2008. Online at: <http://arc-international.net/global-advocacy/sogi-statements/2008-joint-statement/>. (Accessed 20.11.2017)

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Online at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a. (Accessed 20.11.2017)

UN CEDAW General Recommendation No. 18: Disabled Women, Adopted at the Tenth Session of the Committee on the Elimination of Discrimination against Women, in 1991 (Contained in Document A/46/38).

UN Committee against Torture, General comment No. 2, 24 January 2008, (CAT/C/GC/2).

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 5: Persons with Disabilities, 9 December 1994, E/1995/22.

UN Committee on Economic, Social and Cultural Rights, Concluding Observations, Nicaragua, E/C.12/NIC/CO/4, 28 November 2008.

UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20..

UN Committee on Economic, Social and Cultural Rights, General Comment No. 21 Right of everyone to take part in cultural life (Art. 15, 1(a), of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/21 (21 December 2009).

UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of Finland, 28 November 2014, E/C.12/FIN/CO/6.

UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of Finland, E/C.12/FIN/CO/6, 17 December 2014.

UN Committee on Economic, Social and Cultural Rights, Concluding observation on the fourth periodic report of Paraguay, E/C.12/PRY/CO/4, 20 March 2015.

UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the sixth periodic report of Canada, E/C.12/CAN/CO/6, 23 March 2016.

UN Committee on the Elimination of Discrimination against Women, General comment No. 28 (CEDAW/C/GC/28), 16 December 2010.

UN Committee on the Elimination of Discrimination against Women, Concluding observations on South Africa (CEDAW/C/ZAF/CO/4), 5. April 2011.

UN Committee on the Elimination of Discrimination against Women, Concluding observations Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011.

UN Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Finland, 28.2.2014, CEDAW/C/FIN/CO/7.

UN Human Rights Committee, General Comment No. 23: The Right of Minorities (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add. 5,8 April 1994.

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on Canada UN Doc. CCPR/C/79/Add.105 (1999).

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on Mexico, UN Doc. CCPR/C/79/Add.109 (1999).

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on Norway, UN Doc. CCPR/C/79/Add.112 (1999).

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on Australia, UN Doc. CCPR/CO/69/Aus (2000).

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on Denmark, UN Doc. CCPR/CO/70/DNK (2000).

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on Sweden, UN Doc. CCPR/CO/74/SWE (2002).

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on Finland, UN Doc. CCPR/CO/82/FIN (2004).

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on Canada , UN Doc. CCPR/C/CAN/CO/5 (2005).

UN Human Rights Committee. Concluding Observations of the Human Rights Committee on the United States, UN Doc. CCPR/C/USA/CO/3 (2006).

UN Human Rights Committee. Concluding observations on the Sixth periodic report of Finland, CCPR/C/FIN/CO/6, 22 August (2013).

UN Human Rights Committee. Concluding observations of the Human Rights Committee on Mexico (CCPR/C/MEX/CO/5), 17 May 2010.

UN Human Rights Committee. Concluding observations of the Human Rights Committee on Uzbekistan (CCPR/C/UZB/CO/3/Add. 2), 1 March 2013.

UN Human Rights Committee, *X. v. Colombia*, Communication no. 1361/2005 (CCPR/C/89/D/1361/2005, 30 March 2007).

UN Human Rights Committee. Concluding Observations on the Seventh Periodic Report of Sweden, CCPR/C/SWE/CO/728 April (2016).

UN Human Rights Committee, CCPR General Comment No. 18: Non-discrimination Adopted at the Thirty-seventh Session of the Human Rights Committee, on 10 November 1989.

UN Committee on the Rights of the Child, General comment No. 4 (CRC/GC/2003/4).

UN Committee on the Rights of the Child, General Comment No. 9 (2006), The rights of children with disabilities, CRC/C/GC/9, 27 February 2007.

UN Committee on the Rights of the Child, Concluding observations on Chile (CRC/C/CHL/CO/3), 23 April 2007.

UN Committee on the Rights of the Child, "The Rights of Indigenous Children – Recommendations", 34th session, 3 October 2003.

UN Committee on the Rights of the Child, CRC/C/FIN/CO/4, 3 August 2011.

UN Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Chile, 13 April 2016, CRPD/C/CHL/CO/1.

UN Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Brazil, 29 September 2015, CRPD/C/BRA/CO/1.

UN Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Colombia, 30 September 2016, CRPD/C/COL/CO/1.

UN Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Guatemala, 30 September 2016, CRPD/C/GTM/CO/1.

UN Committee on the Rights of Persons with Disabilities, Concluding observations on Canada, 8 May 2017, CRPD/C/CAN/CO/1.

URP, Universal Periodic Review by the United Nations Human Rights Council, Report by Finland, 2/2008. Online at: <http://formin.finland.fi/Public/download.aspx?ID=28054&GUID=%7BC2053F55-97A5-45D6-9EAB-20DDB4179151%7D>. (Accessed 20.11.2017)

URP, Universal periodic review of the United Nations Human Rights Council, Second national report by the government of Finland, 2/2012. Online at: <http://www.formin.fi/public/download.aspx?ID=91784&GUID={D14BB7E0-D02A-4A67-91C3-55C5A0126390}>. (Accessed 20.11.2017)

URP, Report of the Working Group on the Universal Periodic Review, Finland, Addendum, Views on conclusions and/or recommendations, voluntary commitments

and replies presented by the State under review, 25.8.2017, kohta 93.64, 7. Online at: <http://formin.fi/public/download.aspx?ID=170493&GUID={B14A0CE7-D760-4EC2-A68E-369230C5AF71}>. (Accessed 20.11.2017)

YK:n Lapsen oikeuksien komitea, Suomea koskevat päätelmät, 7.9.2011, CRC/C/FIN/CO/44-5. (Translated by the Ministry for Foreign Affairs of Finland).

Cases

Case number 33394/96, Price v. United Kingdom, ECHR 10.7.2001.

Case number 2346/02, Pretty v. United Kingdom ECHR 29.4.2002.

Case number 13444/04, Glor v. Switzerland, ECHR 30.4.2009.

Abdulaziz, Cabalez and Balkandi v. United Kingdom, Judgement of 18 May 1985, Series A, No. 94. (1985) 7 EHRR 471.

C-13/05 Chacón Navas v Eurest Colectividades SA [2006] 3 C.M.L.R. 40 (CJEU (Grand Chamber)).

C-303/06, Coleman v Attridge Law [2008] ECR I-5603, [2008] IRLR 722 (ECJ).

C 354/13 Fag og Arbejde (FOA), acting on behalf of Karsten Kaltoft, v Kommunernes Landsforening (KL), acting on behalf of the Municipality of Billund, (CJEU).

UN Human Rights Committee, *Lovelace v. Canada*, 30 July 1981, HRC, no. 24/1977, A/36/40 (1981) U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).

UN Human Rights Committee, *Kitok v. Sweden*, 27 July 1988, HRC, no. 197/1985, CCPR/C/33/D/197/1985.

UN Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

UN Human Rights Committee, *I. Länsman et al v. Finland*, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992 (1994).

UN Human Rights Committee, *J. Länsman et al v. Finland*, Communication No. 671/1995/, UN Doc. CCPR/C/58/D/671/1995.

UN Human Rights Committee, *A. Äärelä and J. Näkkäläjärvi v. Finland*, Communication No. 779/1997, UNDoc.CCPR/C/73/D/779/1997.

UN Human Rights Committee, *Apirana Mahuika v. New Zealand*, 27.10.2000, 547/1993, U.N. Doc. CCPR/C/70/D/547/1993 (2000).

UN Human Rights Committee, *Young v. Australia*, Communication No. 941/2000 (CCPR/C/78/D/941/2000).

UN Human Rights Committee, *J. and E. Länsman et al v. Finland*, Communication No. 1023/2001. U.N. Doc/CCPR/C/83/D/1023/2001 (2005).

UN Human Rights Committee, *Poma Poma v. Peru*, Human Rights Committee, Communication No. 1457/2006, Doc. CCPR/C/95/D/1457/2006 of 27 March 2009.

UN Human Rights Committee, *H.M. v. Ruotsi*, CRPD/C/7/D/3/2011.

Könskämä ja 38 muuta saamelaiskylää v. Ruotsi, 25.11.1996.

E.B. v. France (no. 43546/02).

Johtti Sappelacat ry ja muut v. Suomi, 18.1.2005.

X and Others v. Austria (no. 19010/07).

Y.Y. v. Turkey, application no. 14793/08.

Handölsdalenin saamelaiskylä ja muut v. Ruotsi, 30.3.2010.

Identoba and Others v. Georgia (application no. 73235/12).

M.C. and C.A. v. Romania (application no. 12060/12).

O.M. v. Hungary (no. 9912/15).

Saramaka v. Suriname, Inter-American Court of Human Rights, Judgment of November 28, 2007, Series c, No 172, para 93.

Judgment in Joined Cases C-148/13 to C-150/13 A, B, C v Staatssecretaris van Veiligheid en Justitie, Court of Justice of the European Union PRESS RELEASE No 162/14 Luxembourg, 2 December 2014. Online at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140162en.pdf>. (Accessed 20.11.2017)

Sámi Parliament

Saamelaiskäräjien henkilöstöpoliittinen ohjelma, tasa-arvo ja yhdenvertaisuussunnitelma, (2013).

Saamelaiskäräjien toimintaohjelma ja taloussuunnitelma 2016–2019, (2016).

Saamelaiskäräjät, Saamelaisten sosiaali- ja terveysalan kehittämisohjelmassa 2016-2019, (2016).

Saamelaiskäräjät, The Sámi Parliament has presented a complaint to the Chancellor of Justice about the conduct of the Ministry of Agriculture and Forestry (2016). Online at: http://www.samediggi.fi/index.php?option=com_content&task=view&lang=en&id=1296. (Accessed 20.11.2017)

Saamelaiskäräjät, Posken saamelaisyksikkö, Lehtola, Riitta, Ruostala Pia, Saamenkielisten palveluiden nykytilan kartoitus, saamelaislasten, nuorten ja perheiden palvelut (1/2017).

Saamelaiskäräjien lausunto oikeusministeriölle 30.3.2017 Dnro 184 /D.a.2/2017.

Saamelaiskäräjät, Tenon kalastussopimus loukkaa saamelaisten ihmisoikeuksia, 28.3.2017. Online at: http://www.samediggi.fi/index.php?option=com_content&task=view&id=1333&Itemid=149. (Accessed 20.11.2017)

Saamelaiskäräjät, Muistio lähetekeskustelusta Saamelaiskäräjien kokouksessa 2/2017, 19.6.2017, 14 § Totuus- ja sovintoprosessi.

Saamelaiskäräjien lausunto hallituksen esitysluonnoksesta laeiksi vammaisuuden perusteella järjestettävistä erityispalveluista sekä sosiaalihuoltolain muuttamisesta. 17.7.2017, STM:n lausuntopyyntö 17.5.2017, Dnro: 348/D.a 2/2017.

Literature

Ahonen, Johanna, Hynninen, Anna, Kouri, Jaana & Mahlamäki, Tiina, ”Ruumiillisuus”, In Kouri, Jaana (ed.), *Askel kulttuurien tutkimukseen, Folkloristiikka, kansantiede ja uskontotiede*, Turun yliopisto, Turku (2015): 265-284.

Ahtela, Karoliina, Bruun, Niklas & Koskinen, Pirkko K. *Tasa-arvo ja yhdenvertaisuus*, Helsinki: Alma Talent (2006).

Aldrich, Robert, ”Homojen ja lesbojen historia”, In Aldrich Robert (ed.), *Rakkaus samaan sukupuoleen*, (suom. Ketola, Veli-Pekka). Multikustannus Oy, (2006),7-28.

Allard, Christina, "Some Characteristic Features of Scandinavian Laws and their Influence on Sami Matters", In *Indigenous Rights in Scandinavia. Autonomous Sami Law* (eds.) Allard, Christina & Skogvang, Susann Funderud, Surrey, UK: Ashgate Publishing limited, (2015), 49-64.

Anttila, Outi, "Hunnuttautuneet musliminaiset moniperusteisen syrjinnän symboleina", *Naistutkimus*, 23(2010):4, 18-32.

Ariotti, Louis, "Social construction of Anangu disability", *Aust. J. Rural Health* 7, 216-222 (1999).

Atrey, S., *Realising Intersectionality in Discrimination Law*, D Phil thesis, Oxford University (2016).

Barker, Clare & Murray, Stuart, "Disabling Postcolonialism, Global Disability Cultures and Democratic Criticism", *Journal of Literary & Cultural Disability Studies*, 4.3: 219-236 (2010).

Barnes, Colin, Mercer, Geof & Shakespeare, *Exploring disability, A sociological introduction*, Cambridge: Polity Press (1999).

Bell, Mark, *Anti-Discrimination Law and the European Union*. New York: Oxford University Press (2002).

Bergman, Elfrida & Linqvist, Sara, *Queering Sápmi. Indigenous stories beyond the norm*, (kääntänyt Hincks, Mikaela, Sweet Translations), Umeå: Qub Förlag, (2014).

Bikenbach, Jerome E. "Monitoring the United Nation's Convention on the rights of Persons with Disabilities: data and International Classification of Functioninf, Disability and Health", *BMC Public Health*, 11(Suppl 4), (2011).

Bongo, Berit Andersdatter, "Hva er en bærer?": belysning om "en" måte å forstå psykiske lidelser på i den samiske kulturen, Tromsø: Institutt for klinisk medisin, Universitetet i Tromsø (2002).

Bongo, Berit Andersdatter, "Samer snakker ikke om helse og sykdom". Samisk forståelseshorison og kummikasjon om helse og sykdom. En kvalitativ undersøkelse I samisk kulutr. Avhandling levert for graden Philosophiae Doctor, Universitetet i Tromsø (2012).

Branson,, Jan, Miller, Don, "Normalisation, community care and the politics of difference", *Australian Disability Review*, 4:17-28 (1992).

Burri, Susanne & Schiek, Dagmar, Multiple Discrimination in EU Law, Opportunities for legal responses to intersectional gender discrimination, European network of legal experts in the field of gender equality, European Commission (2009).

Butler, Judith, Gender Trouble. Feminism and the Subversion of Identity, Tenth Anniversary Edition, Ebook, Taylor and Francis Group, (1999).

Conaghan, Joanne, "Intersectionality and the feminist project in law", In Grabham, Emily, Cooper, Davina, Krishnadas, Jane & Herman, Didi (eds.), Intersectionality and Beyond: Law, Power and the Politics of Location, Taylor & Francis, 21-48, (2008).

Craigie, Jillian, "A Fine Balance: Reconsidering the Patient Autonomy in Light of the UN Convention on the Rights of Persons with Disabilities", *Bioethics*, Vol 29, issue 6, July (2015): 398-405.

Crenshaw, Kimberle, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics", *University of Chicago Legal Forum*, 139-167, Vol. (1989), Iss.1.

Degener, Theresia, "Disabled Persons and Human Rights: The Legal Framework". In Degener, Theresia & Koster-Dreese, Yolán (eds.): Human Rights and Disabled Persons. Essays and Relevant Human Rights Instruments. Hollanti (1995), s. 9-39.

Degener, Theresia, Disability and freedom: the International Covenant on Civil and Political Rights (ICCPR). In Quinn, Gerard & Degener, Theresia with Bruce, Anna; Burke, Christine; Dr. Castellino, Joshua; Kenna, Padraic; Dr. Kilkelly, Ursula and Quinlivan, Shivaun: Human Rights and Disability. The current use and future of United Nations human rights instruments in the context of disability. United Nations. New York and Geneva (2002), s. 37-51.

Devi, Nandini, "Supported Decision-Making and Personal Autonomy for Persons with Intellectual Disabilities: Article 12 of the UN Convention on the Rights of Persons with Disabilities", *The Journal of Law, Medicine and Ethics*, Vol 41, Issue 4, (2013): 792-806.

Driskill, Qwo-Li, "Doubleweaving two-spirit critiques. Building Alliance between Native and Queer Studies", *GLQ: A Journal of Lesbian and Gay Studies*, Vol. 16. Nro. 1-2 (2010), s. 69-92.

Edin-Liljgren, Anette & Flykt, Kia, Glesbygdsmedicinskt centrum, Västerbottens läns landsting, Förutsättningar och villkor för samer med funktionsnedsättning i de samiska förvaltningskommunerna i Sverige, Nordens välfärdscenter (2017).

Eide, Asbjorn & Rosas, Allan, "Economic, Social and Cultural Rights: A Universal Challenge." In Eide, Asbjorn – Krause, Catarina – Rosas Allan (eds.): *Economic, Social and Cultural Rights. A Textbook*, 2nd edition Hollanti (2001).

Eisenberg, Avigail & Spinner-Halev, Jeff (eds.), *Minorities within minorities, Equality, Rights and Diversity*. Cambridge: Cambridge University Press (2005).

Fedreheim, Gunn Elin, Melbøe, Line & Opsal, Kari-Anne, "Demokratisk deltagelse blant mennesker i en dobbel minoritetssituasjon som same og funksjonshemmet", *Norsk statsvitenskapelig tidsskrift*, Vol. 33: 235-253, (2017).

Foucault, Michel, *Madness and Civilization*, London: Tavistock (1980).

Foucault, Michel, *Seksuaalisuuden historia*, (suom. Sivenius, Kaisa) 2. uudistettu laitos, Helsinki: Gaudeamus Helsinki University Press, (2010).

Fredman, Sandra, *Intersectional discrimination in EU gender equality and non-discrimination law*, European Commission, European network of legal experts in gender equality and non-discrimination (2016).

Gjertsen, Hege, Melbøe, Line, Fedreheim, Gunn Elin & Fylling, Ingrid, *Kartlegging av levekårene til personer med utviklingshemming i samiske områder, Nordens välfärdscenter* (2017).

Grønningsæter, Arne Backer & Nuland, Bjørn Richard, *Lesbiske og homofile i Sápmi. En narrativ levekårsundersøkelse, Fafo-rapport* (2009).

Haarni, Ilka, *Keskeneräistä yhdenvertaisuutta, Vammaisten henkilöiden hyvinvointi ja elinolot Suomessa tutkimustiedon valossa*, Stakesin raportteja 6/2006, Helsinki: Valopaino Oy (2006).

Harpur, Paul, "Embracing the New Disability Paradigm: The Importance of the Convention on the Rights of Persons with Disabilities", *Disability & Society*, Vol 27, (2012), issue 1: 1-14.

Hayes, Jeanne & Hannold, Elizabeth "Lisa" M, "The road to empowerment on medicalization of disability", *JHSA WINTER* (2007).

Heckathorn, Douglas D. "Respondent-Driven Sampling: A New Approach to the Study of Hidden Populations", *Social Problems* 44(2), (1997), s. 174-199.

Heikkilä, Lydia, Laiti-Hedemäki & Pohjola, Anneli, *Saamelaisten hyvä elämä ja hyvinvointipalvelut*, Rovaniemi: Lapin yliopistokustannus (2013).

Heinämäki, Leena, "The Nordic Saami Convention: The Right of a People to Control Issues of Importance to Them," in N. Bankes and T. Koivurova (eds.), *The Proposed Nordic Saami Convention, National and International Dimensions of Indigenous Property Rights*, Hart Publishing, Oxford and Portland, Oregon (2013): 125-147.

Heinämäki, L., "The Rapidly Evolving International Status of Indigenous Peoples: The Example of the Sami People in Finland", in C. Allard and S. Fundarud Skogvang (eds.), *Indigenous Rights in Scandinavia, Autonomous Sami Law*, Ashgate (2015): 189-206.

Heinämäki, L., "Global Context – Arctic Importance: Free, Prior and Informed Consent – A New Paradigm in International Law Related to Indigenous Peoples," in Herrmann and Thibault (eds.), *Indigenous Peoples' Governance and Protected Areas in the Circumpolar Arctic*, Springer (2015): 209-240.

Heinämäki, Leena, "Saamelaisten oikeudet Suomessa", in Heinämäki, Leena, Allard, Christina, Kirchner, Stefan, Xanthaki, Alexandra, Valkonen, Sanna, Mörkenstam, Ulf, Bankes, Nigel, Ruru, Jacinta, Gilbert, Jérémie, Selle, Per, Simpson, Audra & Olsén, Laura, *Saamelaisten oikeuksien toteutuminen: kansainvälinen oikeusvertaileva tutkimus, Valtioneuvoston kanslia, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja (2017/4)*, 22-85.

Heiskanen, Heta-Elena., Knuutila, Reija, Heinämäki, Leena., "Ympäristöllinen haavoittuvuus Euroopan ihmisoikeustuomioistuimen tapausten valossa", *Oikeus* (2017) (46): 1: 35-55.

Heiskanen, Tapani, *Yhdenvertaisuus työelämässä, Tutkielma, Turun yliopisto, Oikeustieteellinen tiedekunta* (2012).

Helfer, Laurence, R. & Voeten, Erik., "International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe", *International Organization*, Volume 68, Issue, 1., January (2014): 77-110.

Hird, Myra J. "Gender's nature. Intersexuality, transsexualism and the 'sex'/'gender' binary", *Feminist Theory*, vol. 1(3), (2000), 347-364.

Hirsijärvi, Sirkka & Hurme, Helena, *Tutkimushaastattelu, Teemahaastattelun teoria ja käytäntö*, Gaudeamus Helsinki University Press (2008).

Hirvonen, Vuokko, "Mánnggajienat Sápmi: Seksuála ja sohkabeallenorpmaid čalmmustahtti muitalusaid girjáiivuohta", *Sámi dieđalaš áigečála* 2(2014):71-75. Online at: <http://site.uit.no/aigecala/files/2015/04/SDA-2-2014-arvvostallan-hirvonen.pdf>. (Accessed 20.11.2017)

Hokkanen, Liisa, Experiences of inclusion and welfare services among Finnish Sámi with disabilities, Nordic Welfare Centre (2017).

Häikiö, Liisa & Hvinden, Bjørn, “Finding the way between universalism and diversity: a challenge to the Nordic model”, in Anttonen, Anneli, Häikiö, Liisa & Stefánsson, Kolbeinn (eds.), *Welfare State, Universalism and Diversity*, Cheltenham: Edward Elgar Publishing Limited (2012).

Ilmonen, Kaisa, ”Intersektionaalisen queer-tutkimuksen kytkentöjä: Pohdintoja postkoloniaalisen ja intersektionaalisen seksuaalisuudentutkimuksen lähtökohdista ja keskeisistä kysymyksistä”, *SQS*, Pervoskooppi Artikkelit, (2011):2, s. 1-16.

Jagose, Annamarie, *Queer Theory, An Introduction*, New York, New York University Press (1996).

Johnson, Paul, *Homosexuality and the European Court of Human Rights*, Routledge (2013).

Johnson, Paul, James, “The choice of wording must be regarded as deliberate: same-sex marriage and Article 12 of the European Convention on Human Rights”, *European Law Review*, Issue 1, vol 40, (2015): 207-244.

Joks, Solveig, “Women’s position in the Sámi reindeer husbandry”, in Anderson and Dana (Eds.), *International Handbook of Research on Indigenous Entrepreneurship*, Cheltenham, U.K. Edward Elgar Publishing Limited (2007).

Juvonen, Tuula, ”Kurittomat kokemukset. Quuer studies lesbotutkimuksen haasteena”, *Tiede & Edistys*, 277-283, (1993).

Järvelä, Saara, Perus- ja ihmisoikeuksien tulkinta, kehitys ja vaikutus seksuaali- ja sukupuolivähemmistöjen oikeudelliseen asemaan, OTM-tutkielma, Helsingin yliopisto, (2014).

Kanter, Arlene, S., “The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities”, *34 Syracuse J Int’l L & Com.* 287 (2006-2007).

Karhu, Juha, ”Perusoikeudet ja oikeuslähdeoppi”. *Lakimies*, (5/2003), s. 794–798.

Keal, P., ”Indigenous Sovereignty”, in T., Jacobsen, C. Champford and R. Thakur (eds.), *Re-envisioning Sovereignty – The End of Wesphalia?*, Farnham: Ashgate (2008).

Kivistö, Mari, Kolme ja yksi kuvaa osallisuuteen. Monimenetelmällinen tutkimus vaikeavammaisten ihmisten osallisuudesta toimintana, kokemuksena ja kielenkäyttönä, *Acta Universitatis Lapponiensis* 283. Lapin yliopisto, Rovaniemi: Lapin yliopistopaino, väitöskirja (2014).

Koivunen, Anu & Liljeström, Marianne, ”Kritiikki, visiot, muutos – feministinen purkamis- ja rakentamisprojekti”, in Koivunen, Anu & Liljeström, Marianne, (eds.) *Avainsanat. 10 askelta feministiseen tutkimukseen*, Tamepere: Vastapaino (2004), 9-34.

Koivurova, Timo, ”Alkuperäiskansojen asema ja oikeudet kansainvälisessä oikeudessa”, in K. Kokko, Kysymyksiä saamelaisten oikeusasemasta, Lapin yliopiston oikeustieteellisiä julkaisuja, sarja b numero 30, (2010), s. 26-49.

Koivurova, Timo., ”Jurisprudence of the European Court of Human Rights Regarding Indigenous Peoples: Retrospect and Prospects,” *International Journal on Minority and Group Rights*, Nijhoff, Brill, 18 (2011), 1-37.

Koivurova, Timo. “Alkuperäiskansojen ihmisoikeudet”, in T. Koivurova ja E. Pirjatanniemi (eds.), *Ihmisoikeuksien käsikirja*, Tietosanoma (2013): 246-269.

Krause, Catarina & Scheinin, Martin: “The Right Not to Be Discriminated against: The Case of Social Security”. In Orlin, S. Theodore – Rosas, Allan – Scheinin, Martin: *The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach*. Jyväskylä (2000), s. 253-286.

Kröger, Teppo, ”Tutkimuksen kolme näkökulmaa vammaisuuteen”, *Janus: Sosiaalipolitiikan ja sosiaalityön tutkimuksen aikakauslehti*, 10 (1), 27-38, (2002).

Kumpuvuori, Jukka, Högbacka, Marika, Vammaisten henkilöiden ihmisoikeudet Suomessa, Åbo Akademi, ihmisoikeusinstituutti (2003).

Kuokkanen, Rauna, ”Saamelaiset ja kolonialismin vaikutukset nykypäivänä”, in Kuortti, Joel, Lehtonen, Mikko & Löytty, Olli (eds.), *Kolonialismin jäljet: keskustat, periferiat ja Suomi*, Helsinki: Gaudeamus, (2007)142-155.

Kuokkanen, Rauna, ”Sámenissonat, «árbevierru» ja veahkaválddi hámit”, *Sámi dieđalaš áigečála* 1(2008), 28-50.

Kuokkanen, Rauna, “Self-Determination and Indigenous Women’s Rights at the Intersection of International Human Rights”, *Human Rights Quarterly* 34 (2012) 225–250.

Kyger, Madison H., "Emerging Issues: A Global Analysis: Legal Recognition and Equal Treatment of Transgender Citizens," *University of Baltimore Journal of International Law* (2016), Vol. 5, Iss. 1, Article 6: 118-123

Lang, Sabine, *Men as Women, Women as Men. Changing Gender in Native American Cultures*, Yhdysvallat: The University of Texas Press, (1998).

Lehtola, Veli-Pekka, *Saamelaiskiista. Sortaako Suomi alkuperäiskansaansa?*, Helsinki: Into-kustannus, (2015).

Lehtonen, Jukka, "Työntekijöiden moninaisuus ja työelämän heteronormatiivisuus", in J. Lehtonen (ed.), *Seksuaali- ja sukupuolivähemmistöt työelämässä*, STAKES, raportteja 269 (2002).

Løvdal, Ane Hedvig Heidrunsdotter, *The silence in Sápmi – and the queer Sami breaking it*, Thesis submitted for the Degree of Master of Philosophy in Indigenous Studies, The Arctic University of Norway, (2014).

Magga, Ristenrauna, "Vammaispalvelut", in Välimaa, Aimo & Laiti-Hedemäki, Elsa (eds.), *Birge ja eale dearvan. Saamelaisten sosiaali- ja terveysterveystieteen loppuraportti, Sosiaali- ja terveysministeriön monisteita* (1997), 34-36.

Magga, Ristenrauna, *Geas dieđu, gos doarjaga, Saamelaisten vammaisten, vanhusten ja pitkäaikaissairaiden tiedotus- ja tukiprojektin loppuraportti*, Inari: Saamelaiskäräjät, Kynnny ry (1999).

Mahlamäki, Pirkko, *Vammaisfoorumi ry, johdanto, Suomen YK-liitto, YK:n yleissopimus vammaisten henkilöiden oikeuksista ja sopimuksen valinnainen pöytäkirja*, Sälekarin kirjapaino Oy, Somero (2015).

Makkonen, Timo, *Multiple, compound and intersectional discrimination: bringing the experiences of the most marginalized to the fore*, Åbo Akademi University, Institute For Human Rights, (2002).

Makkonen, Timo, *Syrjinnän vastainen käsikirja*, International Organization for Migration, Regional Office for the Baltic and Nordic States, Vammala: Vammalan Kirjapaino Oy (2003).

Mattanen, Leena, "Täytyy puhua enemmän. Hiljaisuus ei ratkaise ongelmia." *Queer-saamelaisten hyvinvoinnin ja pärjäämisen edellytykset*, Pro gradu-tutkielma, Giellagas-instituutti, Oulun yliopisto, (2016).

Medicine, Beatrice, "Directions in Gender Research in American Indian Societies: Two Spirits and Other Categories", *Online Reading in Psychology and Culture*, 3(1),

(2002). Online at: <http://scholarworks.gvsu.edu/orpc/vol3/iss1/2/>. (Accessed 20.11.2017)

Meekosha, Helen, "Decolonising disability: thinking and acting globally", *Disability & Society*, 26:6, 667-682, (2011).

Mégrét, Frédéric, "The Disabilities Convention, Human Rights of Persons with Disabilities or Disability Rights?", *Human Rights Quarterly*, Volume 30, number 2, May (2008): 494-516.

Melbøe, Line, Johnsen, Bjørn-Eirik, Fredreheim, Gunn Elin, Hansen, Ketil Lenert, Situasjonen til samer med funksjonsnedsettelse, Nordens Velfærdscenter (2016a).

Melbøe, Line, Hansen, Ketil Lenert, Johnsen, Bjørn-Eirik, Fredreheim, Gunn Elin, "Ethical and methodological issues in research with Sami experiencing disability", *International Journal of Circumpolar Health*, 75:1 (2016b).

Miettinen, Sari, "Queer-tutkimus", in Kouri, Jaana, (ed.), *Askel kulttuurien tutkimukseen, Folkloristiikka, kansantiede ja uskontotiede*, Turun yliopisto, Turku (2015).

Niemivuo, M., "Suomen Perustuslaki ja Saamelaiset", in K. Kokko (ed.), *Kysymyksiä saamelaisten oikeusasemasta*, Lapin yliopiston oikeustieteellisiä julkaisuja Sarja B no 30, Rovaniemi (2010).

O' Flaherty, Michael, Fisher, John, "Sexual Orientation, Gender Identity and International Human Rights, Contextualizing the Yogyakarta Principles", *Human Rights Law Review*, Volume 8, Issue 2, 1 January (2008): 207-248.

Ojanen, Tuomas, ja Scheinin, Martin: "Yhdenvertaisuus ja syrjinnän kielto (PL 6 §)", in Karapuu, Ojanen, Scheinin, Tuori, Viljanen. Hallberg: *Perusoikeudet*, s. 227- 280. Sanoma Pro, Helsinki (2011).

Oliver, Michael, *The Politics of Disablement*, Basingstoke: Macmillan (1990).

Oliver, Mike, "Changing the Social Relations of Research Production?", *Disability, Handicap & Society*, 7:2, 101-114, (1992).

Oliver, Michael, "Theories in health care and research, Theories of disability in health practice and research", *BMJ*, 317:1446-1449 (1998).

Olsén, Laura, Harkoma, Assi, Heinämäki, Leena & Heiskanen, Heta, *Saamelaisten perinnetiedon huomioiminen ympäristöpäätöksenteossa*, *Juridica Lapponica* 41, Rovaniemi: Lapin yliopistopaino (2017).

Olsén, Laura, Heinämäki, Leena & Harkoma, Assi, *The Human Rights and Multiple Discrimination of Minorities within Minorities: Sámi persons with disabilities and sexual and gender minorities*, *Juridica Lapponica* 44, Rovaniemi: Lapin yliopistopaino (2017) (painossa).

Ortoleva, Stephanie, Lewis, Hope, *Forgotten sisters – A report on violence against women with disabilities: an overview of its nature, scope, causes and consequences*, Northeastern University School of Law, Northeastern Public Law and Theory Faculty Research Paper Series no 104-212., (2012).

Oskal, Berit Margrethe, *Garra boját ja fiinna nieiddat. Heteronormativitehta sámi čáppagirjjálašvuodas, Sámi girjjálašvuoda masterdutkanmuš*, The Arctic University of Norway, (2015).

Pellonpää, Matti, *Euroopan ihmisoikeussopimus*. Helsinki: Lakimiesliiton kustannus (1996).

Pentikäinen, Merja: ”Ihmisoikeudet - kehityksestä, merkityksestä ja haasteista; ihmisoikeuskulttuurin ohuudesta Suomessa”, in Tatu Hyttinen ja Katja Weckström (eds.): *Turun yliopiston oikeustieteellinen tiedekunta 50 vuotta*. Turun yliopisto, oikeustieteellinen tiedekunta, Turku, (2011).

Pirjatanniemi, E., “Vammaisten henkilöiden ihmisoikeudet”, in T. Koivurova ja E. Pirjatanniemi (eds.), *Ihmisoikeuksien käsikirja*, Tietosanoma, (2013), s. 270-297.

Pohjoismainen hyvinvointikeskus, *Kunskapsläge: Personer med funktionsnedsättning och samisk bakgrund*, Nordens Välfärdscenter (2014).

Pontes Ferraria, Maria & Gendron, Fidji, “Community-based participatory research with traditional and indigenous communities of the Americas: Historical context and future directions”, *International Journal of Critical Pedagogy*. 3(3) (2011): 153-168.

Prechal, Sacha, “Equality of Treatment, Non-Discrimination and Social Policy: Achievements in Three Themes”, *Common Market Law Review* 41: 533-551 (2004).

Quinn, Gerard & Degener, Theresia, *Expanding the system: the debate about a disability-specific convention*. In Quinn, Gerard & Degener et al (2002).

Randolph, Diane Smith, “The meaning of workplace discrimination for women with disabilities”, *Work*, Vol. 24, nr 4 (2005): 369-380; Nixon, Jennifer, “Domestic violence and women with disabilities: locating the issue on the periphery of the social movements”, *Disability & Society*, Vol 24, (2001), issue 1: 77-89.

Rasmus, Minna, *Bággu vuoligit, bággu birget – Sámemánáid ceavzinstrategiijat Suoma álbmotskuvlla ásodagain 1950–1960-loguin*, Oulun yliopisto: Giellagas- instituutti, (2008).

Rivas Velarde, Minerva Concepción, *The Convention on the Rights of Persons with Disabilities and its implications for the health and wellbeing of indigenous peoples with disabilities*, a thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy, Sydney Medical School, University of Sydney (2014).

Rombouts, S. J., *Having a Say - Indigenous Peoples, International Law and Free, Prior and Informed Consent*, Oisterwijk: Wolf (2014).

Räty, Tapio, *Vammaispalvelut, vammaispalvelujen soveltamiskäytäntö*, Kynnys 2017.

Scheinin, Martin, *Sosiaaliset perusoikeudet ja lainsäätäjä I*. Helsinki (1995).

Schiek, Dagmar, “Broadening the scope and the norms of EU gender equality law: towards a multidimensional conception of equality law”, *Maastricht Journal of European and Comparative Law* (2005), vol. 12, No. 4: 427-466.

Schiek, Dagmar & Lawson, Anna, “Introduction”, in Schiek, Dagmar & Lawson, Anna (eds.), *European Union non-discrimination law and intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination*, Taylor & Francis (2011).

Schulze, Marianne, “Understanding the UN Convention on the Rights of Persons with Disabilities”, *A Handbook on the Human Rights of the Persons with Disabilities* (September 2009), Handicap International.

Shakespeare, Tom, “Social models of disability and other life strategies”, *Scandinavian Journal of disability Research*, 6:1, 8-21 (2004).

Slobokin, Christopher, “Eliminating Mental Disability as a Legal Criterion in Deprivation of Liberty Cases: The Impact of the Convention on the Rights of Persons with Disabilities on the Insanity Defence, Civil Commitment and Competency Law”, *40 Law & Pshychol. Review* 297 (2016): 297-317.

Smith, Linda Tuhiwai, *Decolonizing Methodologies. Research and indigenous peoples*, Lontoo & New York: Zed Books Ltd. (1999).

Squires, Judith, “Intersecting Inequalities: Reflecting on the Subjects and Objects of Equality”, *The Political Quarterly*, Vol. 79, No. 1, 53-62 (2008).

Söder, Mårten, “Tensions, perspectives and themes in disability studies”, *Scandinavian Journal of Disability Research*, 11:2, 67-81 (2009).

Thornberry, P., "The Convention on the Elimination of Racial Discrimination, Indigenous Peoples and Caste/Decent-based Discrimination", Castellino, J. and Walsh, N., (eds.), *International Law and Indigenous Peoples*, Leiden: Martinus Nijhoff Publishers (2005).

Tøssebro, Jan, "Introduction to the special issue: Understanding disability", *Scandinavian Journal of Disability Research*, 6:1, 3-7, (2004).

Uccellari, Paola, "Multiple Discrimination: How Law can Reflect Reality", *The Equality Rights Review*, Vol. 1, (2008): 24-49.

Uttjek, Margaretha, *Levnadsförhållanden bland samer med funktionsnedsättning i Sverige*, Nordens Välfärdscenter (2016).

Vehmas, Simo, "Yksilön vai yhteisön vika? – vammaisuus-käsitteen moraalifilosofista tarkastelua", in Karjalainen, Vappu, Vilkkumaa, Ilpo (eds.), *Kuntoutus kanssamme, Ihmisen toimijuuden tukeminen*, Stakes, Tampere: Juvenes Print – Suomen Yliopistopaino Oy, 41-52, (2012).

Verloo, Mike, "Multiple Inequalities, Intersectionality and the European Union", *European Journal of Women's Studies*, 13(3), 211-228 (2006).

Wallace, Lee, "Homoseksuaalisuuden löytäminen: kulttuurien välinen vertailu ja seksuaalisuuden historia", in Aldrich Robert (ed.), *Rakkaus samaan sukupuoleen*, (suom. Ketola, Veli-Pekka). Multikustannus Oy, (2006), 249-270.

Ward, T., "The Right to Free, Prior and Informed Consent: Indigenous Peoples' Participation Rights within International Law", *10 Northwestern Journal of International Human Rights* (2011) 54, 57.

Warnke, Georgia, *After Identity: Rethinking Race, Sex and Gender*, eBook, Cambridge University Press (2008).

Xanthaki, A., "Indigenous Rights in International Law over the Last 10 Years and Future Developments", *10 Melbourne Journal of International Law* (2009).

Åhren, Mattias., *Indigenous Peoples' Status in the International Legal System*, Oxford: OUP (2016).

Other references:

Aaltonen, Milla, Joronen, Mikko & Villa, Susan, *Syrjintä Suomessa 2008*, Ihmisoikeusliitto ry, Helsinki: Art-Print Oy (2009).

Adoption of Universal Periodic Report Outcome of Finland 36th Session Human Rights Council 21 September 2017, IOK 49/2017.

Antila, Outi & Nousiainen, Kevät, Selvitys tasa-arvolain valvontasäännösten toimivuudesta, Sosiaali- ja terveystieteiden ministeriö, Helsinki (2013).

Born Free and Equal. Sexual Orientation and Gender Identity in International Human Rights Law. UN OHCHR. New York, Geneva 2012.

Burri, Susanne, Schiek, Dagmar, Multiple Discrimination in EU Law, Opportunities for legal responses to intersectional gender discrimination?, European network for legal experts in the field of gender equality, European Commission (2009).

Council of Europe, Discrimination on grounds of sexual orientation and gender identity, in Europe, second edition, Council of Europe, September 2011.

Despouy, Leandro, Special Rapporteur, Report on human rights and disability (E/CN.4/Sub.2/1991/31).

Draft study of the Expert Mechanism on the Rights of Indigenous Peoples, Good Practices and challenges, including discrimination, in business and in access to financial services by indigenous peoples, in particular indigenous women and indigenous persons with disabilities, 10-14 July 2017, tenth session, A/HRC/EMRIP/2017/CRP.1.

Edel, Frédéric, Case law of the European Court of Human Rights relating to discrimination on grounds of sexual orientation or gender identity (2015), Council of Europe.

Eduskunnan oikeusasiamies, Eduskunnan oikeusasiamiehen kertomus vuodelta 2014, K3/2015 vp, Helsinki: Suomen yliopistopaino- Juvenes Print Oy (2015).

Eduskunnan oikeusasiamies, Eduskunnan oikeusasiamiehen kertomus vuodelta 2015, K 11/2016 vp, Tampere: Suomen yliopistopaino- Juvenes Print Oy (2016).

Eduskunnan oikeusasiamies, Eduskunnan oikeusasiamiehen kertomus vuodelta 2016, K 8/2017 vp. Tampere: Juvenes Print – Suomen yliopistopaino (2017).

EN:n ihmisoikeusvaltuutetun Nils Muižnieksin Suomea koskeva raportti 2012 (COMMMDH(2012)27).

Euroopan syrjinnänvastaisen oikeuden käsikirja, Euroopan unionin perusoikeusvirasto, Euroopan neuvosto (2010).

European Commission, Tackling Multiple Discrimination: Practices, policies and laws, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.4, Italy: European Communities (2007).

European Court of Human Rights, Press Release, The requirement to undergo sterilisation or treatment involving a very high probability of sterility in order to change the entries on birth certificates was in breach of the right to respect for private life, ECHR 121 (2017) 06.04.2017.

Faurie, Maija, Saamelainen Kelan asiakkaana, Saamelaisten oikeudet ja asema alkuperäiskansana Kelan toimeenpanemassa sosiaaliturvassa, Sosiaali- ja terveysturvan selosteita, Kelan tutkimusosasto, Helsinki, Tampere: Juvenes Print – Tampereen yliopistopaino Oy, (75/2011).

FRA, Data in Focus Report, Multiple Discrimination, European Union Agency for fundamental Rights, EU-MIDIS (2010).

Gustafsson, Henrik, YK:n vammaissopimus käyttöön! –käsikirja, Invalidiliitto. Online at: https://www.autismiliitto.fi/files/2018/yk_toolkit_pieni.pdf. (Accessed 20.11.2017)

Helander, Eila, selvitys kirkon vihkiöoikeudesta luopumisesta, avioliittoon vihkimisen merkityksestä kirkon identiteetille ja siitä, millaisia vaihtoehtoja kirkolla on edessään (2017). Online at: <http://sakasti.evl.fi/sakasti.nsf/0/F359F1ED9F897DD0C225770E0034026E/%24FILE/Selvitys%20Suomen%20evankelis%20luterilaisen%20kirkon%20vihkiöoikeudesta%20luopumisesta%20ja%20avioliittoon%20vihkimisen%20merkityksesta%20kirkon%20identiteetille%2009062017.pdf>. (Accessed 20.11.2017)

Ihmisoikeudet ja Suomen ulkopoliittikka, Ulkoasiainministeri Erkki Tuomiojan eduskunnan ulkoasiainvaliokunnalle antama selvitys Suomen hallituksen ihmisoikeuspolitiikasta 29.11.2000, Ulkoasiainministeriön julkaisuja, Helsinki.

Ihmisoikeuskeskus, Vammaisten henkilöiden pääsy oikeuksiin: vammaisjärjestöjen neuvontapalvelut (2016). Online at: http://ihmisoikeuskeskus-fi-bin.directo.fi/@Bin/ba571b93dc23df1f1c3fe2eeb145d2cc/1508934260/application/pdf/3503070/Vammaisten_pa%cc%88a%cc%88sy_oikeuksiin_FINAL.pdf. (Accessed 20.11.2017)

Ihmisoikeuskeskus, Ihmisoikeuskeskuksen toimintakertomus 2016, Tampere: Suomen Yliopistopaino Oy – Juvenes Print (2017).

International Law Association, Interim Report: The Right of indigenous peoples at the Hague Conference (London: ILA 2010)

International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, hyväksytty 27.6. 1989, tullut voimaan 5.9.1991, 28 International Legal Materials (1989) 1382.

International Labor Organization, Indigenous Persons with Disabilities, Access to Training and Employment, ILO 2015.

Kansallinen perus- ja ihmisoikeustoimintaohjelma 2017-2019, Oikeusministeriön julkaisu 9/2017. Oikeusministeriö, Helsinki, (2017).

Korhonen, Nita, Jauhola, Laura, Oosi, Olli & Huttunen, Hannu-Pekka, ”Usein joutuu miettimään, miten pitäisi olla ja minne olla menemättä”, Selvitys vihapuheesta ja häirinnästä ja niiden vaikutuksista eri vähemmistöryhmiin, Oikeusministeriö, Selvityksiä ja ohjeita (7/2016).

Kumpuvuori, Jukka, Högbacka, Marika, Vammaisten henkilöiden ihmisoikeudet Suomessa, Sosiaali- ja terveysministeriö (2003).

Lapsiasiavaltuutetun toimiston julkaisuja 2011:10, Erityistä tukea tarvitseva lapsi on ensisijaisesti lapsi, Lapsen oikeudet osaksi vammaispolitiikkaa.

Lehtonen, Jukka, Seksuaali- ja sukupuolivähemmistöt Suomen kunnissa, Keinoja ja ideoita yhdenvertaisuuden tueksi, Työministeriö, Euroopan sosiaalirahasto 2000-2006, Tutkimuksen ja selvitykset 8/06, Helsinki: Oy Edita Ab (2006). Online at: http://www.rakennerrahastot.fi/vanhat_sivut/rakennerrahastot/tiedostot/esr_julkaisut_2000_2006/tutkimukset_ja_selvitykset/09_08-06_seksuaali-ja_sukupuolivahemmistot_suomen_kunnissa_keinoja_ja_ideoita_yhdenvertaisuuden_tueksi.pdf. (Accessed 20.11.2017)

Liikenne ja viestintäministeriö, toimenpideohjelman ”Kohti esteetöntä tietoyhteiskuntaa vuosille 2011-2015,” Ohjelmia ja strategioita 1/2011.

Merja Heikkonen, pääsihteeri, Vammaisten henkilöiden oikeuksien neuvottelukunta, alustus Ihmisoikeuskeskuksen ihmisoikeusvaltuuskunnan vammaisten henkilöiden oikeuksia käsittelevässä työpajassa 18.9.2017.

Myntti, Kristian., Suomen saamelaisten yhteiskunnallinen osallistuminen ja kulttuuri-itsehallinto, Raportti Oikeusministeriölle, osa I. OM, lainvalmisteluosaston julkaisu 2/1997, Helsinki (1997).

Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, 15.9.2014, A/69/L.1.

Parikka, Ulla-Riitta, Selvitys sukupuolivähemmistöjen asemasta, Tasa-arvovaltuutetun toimisto (2012).

Piispainkokouksen selonteko avioliittolain muutoksen johdosta 30.8.2016. Online at: <http://sakasti.evl.fi/sakasti.nsf/0/F359F1ED9F897DD0C225770E0034026E/%24FILE/PK-VALMIS-AVIOLIITTOSELONTEKO-2016.pdf>. (Accessed 20.11.2017)

Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, Suomen vastaukset, [file:///C:/Users/lheinama/Downloads/CoE%20CM_Rec\(2010\)5%20implementation%20Finland%20final%2030.1.2013.pdf](file:///C:/Users/lheinama/Downloads/CoE%20CM_Rec(2010)5%20implementation%20Finland%20final%2030.1.2013.pdf). (Accessed 20.11.2017)

Rautiainen, Pauli, Lavapuro, Juha, Hartzell, Jari, Lehtinen, Emma, Meriläinen, Niina, Neuvonen, Riku & Todorov, Elina, Ihmisoikeusindikaattorien käyttäminen Suomen perus- ja ihmisoikeustilanteen seurantaan, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja (36/2016).

Report of the Office of the United Nations High Commissioner for Human Rights - Thematic study on the issue of violence against women and girls and disability 30.3.2012, A/HRC/20/5.

Report of the Special Rapporteur on torture, or other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1. February 2013, A/HRC/22/53.

Rivas Velarde, Minerva, Indigenous Persons with Disability, Access to Training and Employment, International Labour Organization, Switzerland (2015).

Sammallahti, Pekka, Saamelais-suomalais-saamelainen sanakirja, Girjegiisä Oy, Ohcejohka 1993. 5. painos (2013).

Sario, Katariina, Suomen keskeiset vammaisten oikeuksiin kehitysyhteistyössä liittyvät saavutukset vuosina 2011-2014 (18.8.2014). Online at: [http://formin.finland.fi/public/download.aspx?ID=133861&GUID={56BC1A92-EE98-425A-B4AB-39D5BFE8A567}](http://formin.finland.fi/public/download.aspx?ID=133861&GUID={56BC1A92-EE98-425A-B4AB-39D5BFE8A567}.). (Accessed 20.11.2017)

Seksuaali- ja sukupuolivähemmistöön kuuluvien perus- ja ihmisoikeudet Suomessa, Oikeusministeriö, Selvityksiä ja ohjeita, Helsinki: Oikeusministeriö 34/2014. Online at: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76543/omso_34_2014seksuaalivahemmistot.pdf?sequence=1. (Accessed 20.11.2017)

Sosiaali- ja terveysministeriö, Tasa-arvolaki (2015), Esite.

Study by the Expert Mechanism on the Rights of Indigenous Peoples, Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, 19 August 2015, A/HRC/30/53.

Sukupuolen oikeudellisen vahvistamisen edellytykset, Työryhmän loppuraportti, Sosiaali- ja terveysministeriön raportteja ja muistioita 23/2015.

Suomen ulkoasiainhallinnon ihmisoikeuspoliittinen toimintaohjelma 2013 – 2015, Ulkoasiainministeriö, Joensuu: Kopijyvä Oy, (2013). Online at: <http://formin.finland.fi/public/download.aspx?ID=116041&GUID={D0D4D53A-778C-4BBF-A808-D57DB8F206E4}>. (Accessed 20.11.2017)

Suomen ulkoasiainhallinnon ihmisoikeusstrategia, Ulkoasiainministeriö, Jyväskylä: Kopijyvä Oy, (2013). Online at: <http://formin.finland.fi/public/download.aspx?ID=115729&GUID={DD6BF865-D308-4C5B-B7F7-959D0AD65DD0}>. (Accessed 20.11.2017)

Suomen vammaispoliittinen ohjelma, VAMPO 2010–2015, Vahva pohja osallisuudelle ja yhdenvertaisuudelle, sosiaali- ja terveysministeriö, 2010.

Suomen YK-liitto, YK:n yleissopimus vammaisten henkilöiden oikeuksista ja sopimuksen valinnainen pöytäkirja, Sälekarin kirjapaino oy, Somero (2015).

Tackling Multiple Discrimination: Practices, Policies and Laws, European Commission (2007).

Tarjamo, Kerttu, Selvitystyö ulkoasiainministeriön toiminnasta LHBTI-ihmisoikeuksien edistämiseksi. 22.12.2012.

Tasa-arvovaltuutetun toimisto, Selvitys sukupuolivähemmistöjen asemasta, Tasa-arvojulkaistu (2012:1). Online at: <https://www.tasa-arvo.fi/documents/10181/34936/Selvitys+sukupuolivahemmistojen+asemasta.pdf/4c84618f-8c6c-484f-a7e5-bfda8d06e9a6>. (Accessed 20.11.2017)

Turvapaikkaa, rajoja ja maahanmuuttoa koskevan eurooppaoikeuden käsikirja, Euroopan unionin perusoikeusvirasto, Euroopan neuvosto (2014).

Tuure, Tuomas, Vammaisten ihmisoikeudet Suomen ulkopoliitikassa (2013). Online at: <http://formin.finland.fi/public/download.aspx?ID=118431&GUID={E972A78A-2D14-488A-8386-E1CA28240440}>. (Accessed 20.11.2017)

Ulkoasiainministeri Tarja Halosen eduskunnan ulkoasiainvaliokunnalle antama selonteko Suomen hallituksen ihmisoikeuspolitiikasta 11.11.1998 (1998).

UN Economic and Social Council, UN Permanent Forum on Indigenous Issues, Study on the situation of indigenous persons with disabilities with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development, E/C.19/2013/6.

UN Human Rights Council, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 17 November 2011, A/HRC/19/41 ja UN GA A/HRC/22/53.

Valtioneuvoston selonteko Suomen ihmisoikeuspolitiikasta, Helsinki: Edita Prima Oy, (2004). Online at:
<http://www.formin.fi/public/download.aspx?ID=69315&GUID={A4EDB3C3-1FF2-4C68-90D8-2B937828D80C}>. (Accessed 20.11.2017)

Valtioneuvoston selonteko Suomen ihmisoikeuspolitiikasta, (2009). Online at:
<http://www.formin.fi/public/download.aspx?ID=69310&GUID={0AFC392E-12BD-41C4-927C-257A392DB382}>. (Accessed 20.11.2017)

Valtioneuvoston ihmisoikeusselonteko 2014, Ulkoasiainministeriö, Jyväskylä: Grano Oy, (2014). Online at:
<http://formin.finland.fi/public/download.aspx?ID=136941&GUID=%7b7E6D44FB-6F31-4BFA-A521-F5CCAC509B24%7d>. (Accessed 20.11.2017)

WHO, ICF, Toimintakyvyn, toimintarajoitteiden ja terveyden kansainvälinen luokitus, World Health Organization, Stakes, Ohjeita ja luokituksia, Tampere: Juvenes Print – Suomen yliopistopaino Oy (2004:4).

WHO, World Report on Disability, World Health Organization & World Bank, Malta (2011).

Yhdenvertaisuusvaltuutettu, ”Vammaisena olen toisen luokan kansalainen”, Selvitys vammaisten syrjintäkokemuksista arjessa, Oikeusministeriö ja syrjinnän seurantajärjestelmä, Helsinki: Lönnberg painot Oy (2016).

Internet sources

Aapalahti, Riikka, Translasten ja – nuorten ihmisoikeustilanteesta Suomessa, 21.6.2017. Online at: <http://www.raapalahti.fi/2017/06/translasten-ja-nuorten.html>. (Accessed 20.11.2017)

Amenesty International, Tanskan translaki merkittävä askel,(12.6.2014). Online at: <https://www.amnesty.fi/ihmisoikeusjarjestot-suomen-uudistettava-translaki-kiireellisesti/>. (Accessed 20.11.2017)

Autismi- ja aspergerliitto, Vammaisfoorumin ja KVANKin kannanotto: Suomella mahdollisuus tehdä kansallisia rajauksia hankintalakiin, 6.6.2016. Online at: https://www.autismiliitto.fi/liitto/kannanotot_ja_lausunnot/vammaisfoorumin_ja_kvankin_kannanotto_suomella_mahdollisuus_tehda_kansallisia_rajauksia_hankintalakiin.2637.news?3048_o=20. (Accessed 20.11.2017)

Autismi ja aspergerliitto, YK:n vammaisten henkilöiden oikeuksia koskeva yleissopimus astuu voimaan 10.6.2016 (Accessed 21.11.2017). Online at: https://www.autismiliitto.fi/liitto/ajankohtaista/yk_n_vammaisten_henkiloiden_oikeuksia_koskeva_yleissopimus_astuu_voimaan_10.6.2016.2617.news.

Barne-, ungdoms- og familiedirektoratet, About us (19.9.2016). Online at: https://www.bufdir.no/en/English_start_page/About_us/. (Accessed 20.11.2017)

Coronaria, Asiantuntijat (Accessed 11.11.2017). Online at: <https://www.coronaria.fi/asiantuntijat/sunnamaarit-sara-tornensis/>.

Disabled People's International, About us (2012). Online at: <http://www.disabledpeoplesinternational.org/AboutUs>. (Accessed 20.11.2017)

Eduskunta, Vammaisten oikeuksien yleissopimuksen ratifiointi (20.5.2016). Online at: https://www.eduskunta.fi/FI/tietoaeduskunnasta/kirjasto/aineistot/kotimainen_oikeus/LATI/Sivut/vammaisten-oikeuksien-yleissopimuksen-ratifiointi.aspx. (Accessed 20.11.2017)

EQUALEX, LGBT Rights in Denmark. Online at: <http://www.equaldex.com/region/denmark>. (Accessed 20.11.2017)

Euroopan Unioni, EU:n oikeus. Online at: https://europa.eu/european-union/eu-law/legal-acts_fi. (Accessed 20.11.2017)

Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (lgbti) persons. Online at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137584.pdf. (Accessed 20.11.2017)

Hallituksen esityksen pohjalta voimaan tulleet lait. Online at: <https://www.eduskunta.fi/FI/vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiat&docid=he+169/2001>. (Accessed 20.11.2017)

Helsingin hiippakunta, Tuomiokapituli anoi pastori Kai Sadinmaalle vakavan moitteen, 13.9.2017. Online at: <http://www.helsinginhiippakunta.evl.fi/?x18049=2767239>. (Accessed 20.11.2017)

Seta ry:n ja Trasek ry:n lausunto sosiaali- ja terveysalan eettiselle neuvottelukunnalle. Asia: Tarve ’transseksuaalin sukupuolen vahvistamisesta’ annetun lain saattamiseen ajan tasalle 14.4.2013. Online at: <http://seta.fi/setan-ja-trasekin-lausunto-sosiaali-ja-terveysalan-eettiselle-neuvottelukunnalle/>. (Accessed 20.11.2017)

Seta, Ihmisoikeusjärjestöjen yhteinen kannanotto, (16.10.2015). Online at: <http://seta.fi/ihmisoikeusjarjestot-vaativat-itsemaaramisoikeus-sukupuoleen-lakiuudistuksen-lahtokohdaksi/>. (Accessed 20.11.2017)

Ihmisoikeuskeskus, Vammaisten ihmisoikeuskomitea aloittanut toimintansa (8.11.2016). Online at: <http://www.ihmisoikeuskeskus.fi/?x177247=4353331>. (Accessed 20.11.2017)

ILGA –Europe, Rainbow Europe, Country Ranking. Online at: <https://rainbow-europe.org/country-ranking>. (Accessed 20.11.2017)

ILGA –Europe, Rainbow Europe, Finland according to ILGA-Europe. Online at: <https://rainbow-europe.org/#8632/0/0>. (Accessed 20.11.2017)

ILGA Europe, What is ILGA-Europe. Online at: <https://www.ilga-europe.org/who-we-are/what-ilga-europe>. (Accessed 20.11.2017)

Kaleva, Hankintalaki vei vammaisilta päätäntävällän omasta elämästään – ”Horjutettu luottamusta arkeen ja koko yhteiskuntaan”, (17.10.2017). Online at: <http://www.kaleva.fi/uutiset/kotimaa/hankintalaki-vei-vammaisilta-paatantavallan-omasta-elamastaan-horjutettu-luottamusta-arkeen-ja-koko-yhteiskuntaan/772663/>. (Accessed 20.11.2017)

Kirkkomäki, Pia, Kotikuntalain uudistukset, Kehitysvammaisten tukiliitto ry. Online at: <http://www.kvtl.fi/fi/ammattisivut/asuminen/kotikuntalain-uudistukset/>. (Accessed 20.11.2017)

Kontinen, Juha-Pekka, “Vammaisten ihmisoikeudet Suomessa”, Vammaisten ihmisoikeuskeskus VIKE, Suuntaaja 3/11 (2011). Online at: <https://www.aspa.fi/fi/print/808>. (Accessed 20.11.2017)

Kuokkanen, Rauna, Mitä on saamelaisten hyvinvointi? Tarkastelua kansainvälisessä alkuperäiskansojen kontekstissa. SámiSoster –seuran 10-vuotis julhaseminaari, Inari 21.4.2008, 7. Online at: <https://rauna.files.wordpress.com/2008/04/samisostersuomi.pdf>. (Accessed 20.11.2017)

Kuuluu kaikille, Suomeen voidaan saada Pohjoismaiden paras translaki, 5.7.2017. Online at: <http://www.translaki.fi/2017/07/05/suomeen-voidaan-saada-pohjoismaiden-paras-translaki/>. (Accessed 20.11.2017)

Kynnys ry. Tiedote: Pyyntö yhdenvertaisuusvaltuutetulle VR:n käytäntöjen huomioimiseksi. 15.8.2017. Online at: <http://kynnys.fi/news/tiedote-pyynto-yhdenvertaisuusvaltuutetulle-vrn-kaytantojen-huomioimiseksi/>. (Accessed 20.11.2017)

Kynnys ry, Vammaisten henkilöiden ihmisoikeuskomitea pyytää huomioimaan vammaisten osallistamisen sote- ja maakuntauudistuksessa, lausunto ihmisoikeuskeskukselle ja ihmisoikeusvaltuuskunnalle. Online at: <http://kynnys.fi/news/vammaisten-henkiloiden-ihmisoikeuskomitea-pyytaa-huomioimaan-vammaisten-osallistamisen-sote-ja-maakuntauudistuksessa/>. (Accessed 20.11.2017)

Lapin Kansa, Isä on ensi kertaa raskaana Suomessa – terveydenhuollon titetojärjestelmät eivät tunnista tilannetta, 7.10.2017. Online at: <https://www.lapinkansa.fi/kotimaa/isa-on-ensi-kertaa-raskaana-suomessa-terveydenhuollon-tietojarjestelmat-eivat-tunnista-tilannetta-200443437/>. (Accessed 20.11.2017)

Maailmaa, Kansainvälinen paine Suomeen kohtaan kasvaa: translaki uudistettava. Online at: <http://www.maailma.net/nakokulmat/kansainvalinen-paine-suomea-kohtaan-kasvaa-translaki-uudistettava>. (Accessed 20.11.2017)

Oikeusministeriön tiedote. Online at: <http://oikeusministerio.fi/fi/index/ajankohtaista/tiedotteet/2013/05/eulletoivotaanstrategiaaseksuaalijasukupuolivahemmistojenoikeuksienturvaamiseksi.html>. (Accessed 20.11.2017)

Oikeusministeriö, Pohjoismaiden saamelaisopimus parafoitu, 13.1.2017. Online at: http://oikeusministerio.fi/artikkeli/-/asset_publisher/pohjoismaiden-saamelaisopimus-parafoitu. (Accessed 20.11.2017)

Pietikäinen, Sirpa, Vierailijablogi: Saamelaisten oikeudet tarvitsevat vahvempaa turvaa, Ihmisoikeusliitto, 3.1.2017. Online at: <https://ihmisoikeusliitto.fi/vierailijablogi-saamelaisten-oikeudet-tarvitsevat-vahvempaa-turvaa/>. (Accessed 20.11.2017)

Rautiainen, Pauli, ”Tasa-arvoinen avioliittolaki ei ratkaissut kaikkia seksuaalivähemmistöjen ihmisoikeusongelmia”, perustuslakiblogi, 16.12.2014. Online at: <https://perustuslakiblogi.wordpress.com/2014/12/16/pauli-rautiainen-tasa-arvoinen-avioliittolaki-ei-ratkaissut-kaikkia-seksuaalivahemmistojen-ihmisoikeusongelmia/>. (Accessed 20.11.2017)

Rautiainen, Pauli, Vaatimus lisääntymiskyvyttömyydestä loukkaa transihmisten oikeuksia, perustuslakiblogi, 30.8.2017. Online at: <https://perustuslakiblogi.wordpress.com/2017/08/30/pauli-rautiainen-vaatimus-lisaantymiskyvyttomyydesta-loukkaa-transihmisten-oikeuksia/>. (Accessed 20.11.2017)

Saaristo, Sari, Tarina sisaruudesta rikkoo saamelaisia tabuja, Kirkko ja kaupunki. Online at: <https://www.kirkkojakaupunki.fi/-/tarina-sisaruudesta-rikkoo-saamelaisia-tabu-1>. (Published 22.1.2016). (Accessed 20.11.2017)

SEIS-projekti, Sosiaali- ja terveydenhuolto ja syrjintä. Online at: <https://yhdenvertaisuus-fi-bin.directo.fi/@Bin/30c96d1a00d8cc86e2ba16c6e6a6dabb/1509358262/application/pdf/115079/SEIS-soster.pdf>. (Accessed 20.11.2017)

Seta, Norjaan itsemääräämisoikeuteen perustuva translainsäädäntö, 7.6.2016. Online at: <http://seta.fi/norjaan-itsemaaraamisoikeuteen-perustuva-translainsaadanto/>. (Accessed 20.11.2017)

Seta, Sateenkaarisanasto. Online at: <http://seta.fi/sateenkaarisanasto/>. (Updated 12.12.2016.) (Accessed 20.11.2017)

Seta, Avioliittolaki, (7.8.2017). Online at: <http://seta.fi/avioliittolaki/#otsikko1>. (Accessed 20.11.2017)

Seta, Opas toimittajille - Näin kirjoitat seksuaali- ja sukupuolivähemmistöistä, (2016), 7. Online at: https://www.dropbox.com/s/x198rqyo222godo/Setan_toimittajaopas_2016.pdf?dl=0. (Accessed 30.1.2018)

Seta, Seksuaalinen suuntautuminen. Online at: <http://seta.fi/seksuaalinen-suuntautuminen/>. (Accessed 20.11.2017)

Seta, Sukupuoli. Online at: <http://seta.fi/sukupuoli/>. (Accessed 20.11.2017)

Seta, Miesparien raskausuutinen konkretisoi translain ongelmia, 9.10.2017. Online at: <http://seta.fi/miesparin-raskausuutinen-konkretisoi-translain-ongelmia/>. (Accessed 20.11.2017)

Seta, Adoptio, 20.9.2017. Online at: <http://seta.fi/avioliittolaki/#otsikko7>. (Accessed 20.11.2017)

Sosiaali- ja terveysministeriö. Online at: http://stm.fi/artikkeli/-/asset_publisher/valtioneuvosto-asetti-vammaisten-henkiloiden-oikeuksien-neuvottelukunnan. (Accessed 20.11.2017)

Sosiaali- ja terveysministeriö, Vammaislainsäädännön uudistus. Online at: <http://stm.fi/vammaislainsaadannon-uudistus>. (Accessed 20.11.2017)

Suoma Sámi Nuorat, Queering Sápmi: jälkimietteitä. Online at: <http://www.ssn.fi/queering-sapmi-jalkimietteita/>. (Published 23.9.2013).

Suomen queer-tutkimuksen seura, Säännöt, 2§ TARKOITUS JA TOIMINNAN LAATU. Online at: <https://sqshome.wordpress.com/2007/04/06/saannot/>. (Accessed 20.11.2017)

Trasek, Seta, Dreamwear Club ja Translasten ja -nuorten perheet ry. Online at: <http://trasek.fi/>. (Accessed 20.11.2017)

Ulkoasiainministeriö, Suomen kansainvälinen ihmisoikeuspolitiikka. Online at <http://formin.finland.fi/Public/default.aspx?nodeid=49583&culture=fi-FI&contentlan=1>. (Accessed 20.11.2017)

Ulkoasiainministeriö, OHCHR; YK:n vammaisten henkilöiden oikeuksien erityisraportoin tukeminen; 1. lisämyöntö (11.5.2017). Online at: <http://formin.finland.fi/public/default.aspx?contentid=362908&nodeid=48022&contentlan=1&culture=fi-FI>. (Accessed 20.11.2017)

UN Special Rapporteur on the Rights of Persons with Disabilities. Online at: <http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/SRDisabilitiesIndex.aspx>. (Accessed 20.11.2017)

The United Nations and Indigenous Peoples with Disabilities. Online at : <https://www.un.org/development/desa/disabilities/issues/the-united-nations-and-indigenous-persons-with-disabilities.html>. (Accessed 20.11.2017)

Vaatus lisääntymiskyvyttömyydestä loukkaa transihmisten oikeuksia, perustuslakiblogi 30.8.2017. Online at: <https://perustuslakiblogi.wordpress.com/2017/08/30/pauli-rautiainen-vaatimus-lisaantymiskyvyttomyydesta-loukkaa-transihmisten-oikeuksia/>. (Accessed 20.11.2017)

Vammaisten henkilöiden tuen ja välttämättömän avun kilpailuttamisen lopettaminen. Online at: <https://www.kansalaisaloite.fi/fi/aloite/2538>. (Accessed 20.11.2017)

Verner, Kotikuntalaki (7.3.2016). Online at: <http://verneri.net/yleis/kotikuntalaki>. (Accessed 20.11.2017)

Vihanen, Suvi, Helsingin Sanomat, Homoparit saavat nyt adoptoida, mutta onnistuuko se käytännössä? ”Asiasta hyvin vähän kokemusta”, (9.3.2017). Online at: <https://www.hs.fi/kotimaa/art-2000005120049.html>. (Accessed 20.11.2017)

Väisänen, Mikko, Mitä ovat Yogyakartan periaatteet? Finnqueer. Online at: http://www.finnqueer.net/juttu.cgi?s=310_5_1. (Accessed 20.11.2017)

Willimas, Walter L. The ‘Two-Spirit’ People of Indigenous North Americans, First People. Online at: <http://www.firstpeople.us/articles/the-two-spirit-people-of-indigenous-north-americans.html>. (Accessed 20.11.2017)

Yhdenvertaisuusvaltuutettu, Lausunnot. Online at: <https://www.syrjinta.fi/lausunnot>. (Accessed 20.11.2017)

Yhdenvertaisuusvaltuutettu, LHBTI-yhteisön ja poliisin edustajat tapasivat Pride-viikolla yhdenvertaisuusvaltuutetun ja Setan järjestämässä tilaisuudessa ja keskustelivat seksuaali- ja sukupuolivähemmistöjen aseman parantamisesta (30.6.2017). Online at: <https://www.syrjinta.fi/-/lhbti-yhteison-ja-poliisin-edustajat-tapasivat-pride-viikolla-yhdenvertaisuusvaltuutetun-ja-setan-jarjestamassa-tilaisuudessa-ja-keskustelivat-seksuaa>. (Accessed 20.11.2017)

YLE 1.12.2015, Suomen Miss Maailma –kilpailija edustaa pilailupuodin lapinpuvussa. Online at: https://yle.fi/uutiset/osasto/sapmi/suomen_miss_maailma_-_kilpailija_edustaa_pilailupuodin_lapinpuvussa/8493787.

YLE 10.5.2016, Kiasmaa arvostellaan feikkisaamenpukuvideon ostamisesta. Online at: <https://yle.fi/uutiset/3-8869765>. (Accessed 20.11.2017)

YLE 2.5.2017, ”Árktalaš guovddáš ordne bargobaji sámi seksuálalašvehádagaid rivttiin”. Online at: https://yle.fi/uutiset/osasto/sapmi/arkktalas_guovddas_ordne_bargobaji_sami_seksualala_svehadagaid_rivttiin/9590861. (Accessed 20.11.2017)

YLE, Saamelaisten ja valtion välistä historiaa selittelevän totuuskomission perustaminen etenee (7.8.2017). Online at: <https://yle.fi/uutiset/3-9685949>. (Accessed 20.11.2017)

YLE, ”Pussaavat saamelaismiehet liikaa joillekin”, 22.7.2016, updated 21.8.2017. Online at: <https://yle.fi/uutiset/3-9044139>. (Accessed 20.11.2017)

YLE Sápmi, Historioitsija: Entisajan saamelaiset sietivät hyvin homoseksuaalisuutta, 27.1.2016, updated 21.8.2017. Online at: <https://yle.fi/uutiset/3-8626978>. (Accessed 20.10.2017).



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