

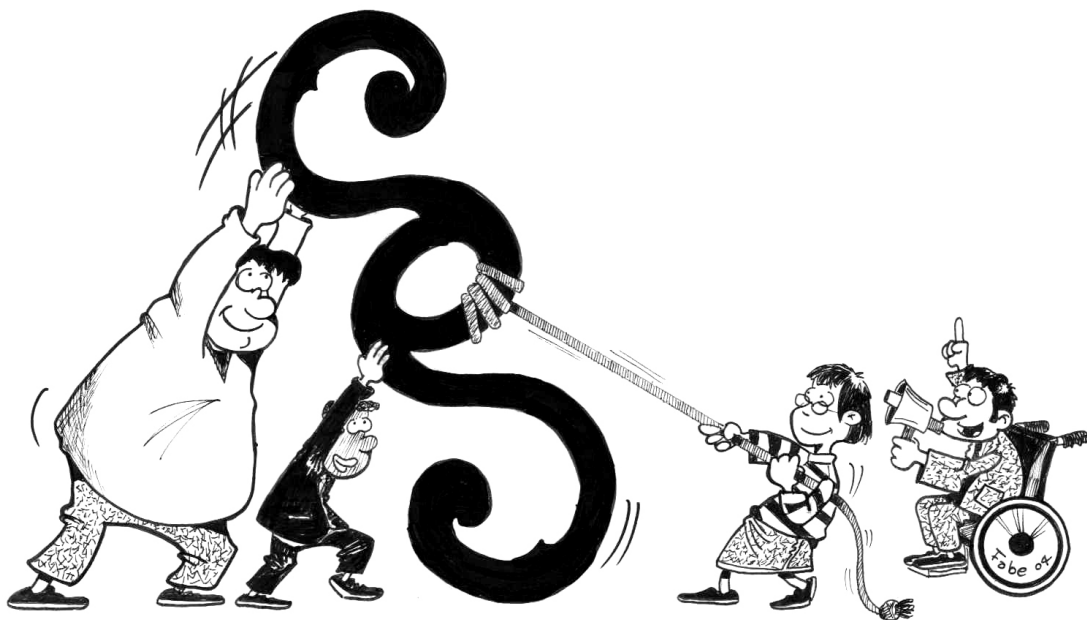
The European Union



against discrimination

Equality Act

- a toolkit against discrimination



Moninaisuuden puolesta



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1. Equality Act - whom does it concern?

Although discrimination is prohibited by virtue of several national laws and Finland is a party to several international instruments promoting equality, many people continue to be exposed to discrimination either at work or during their free time.

The Equality Act, which came into force at the beginning of February 2004, seeks to redress this problem. The purpose of the Act is to foster equality and enhance the protection provided by law to those who have experienced discrimination.

The Equality Act prohibits discrimination based on age, racial or ethnic origin, citizenship, language, religion or belief, conviction, opinion, state of health, disability, sexual orientation or other personal characteristics (such as financial position, pregnancy, and family situation). The term 'ethnic origin' refers both to immigrants and Finland's 'old' ethnic minorities such as the Roma, Sámi, Tatars, Jews and representatives of the old Russian community. Thus, the Act applies both to Finns born in Finland and children, men and women – whatever their age – who have immigrated to Finland at some later stage.

The Act defines what discriminatory behaviour is and when placing someone in an unequal position is acceptable. The most crucial amendments include the obligation of the authorities to draw up an equality plan promoting ethnic equality, the opportunity for those who are exposed to discrimination to claim compensation, and the shared burden of proof.

This brochure presents a summary of the grounds and main contents of the Equality Act. In the Appendices section, the representatives of the Sámi Parliament, Finnish Disability Forum and SETA - Sexual Equality in Finland (Appendix 1) express their views on the Act.

The aim is that everyone should know his or her rights and obligations and the measures which help to redress and prevent discrimination. Rather than being a privilege of a selected few, equality should be accessible to us all.

2. Equality Act: background

Key words: Constitution of Finland, Race Equality Directive and Employment Equality Directive

The roots of the Equality Act lie in Finland's national legislation. According to the Constitution of Finland everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the basis of sex, age, origin, language, religion, conviction, opinion, health, disability or other personal characteristics.

Besides the Constitution, discrimination is also prohibited in the Employment Contracts Act, the Act on Equality between Women and Men and the Penal Code.

Furthermore, Finland is a party to other international human rights instruments such as the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.

The Equality Act tightens up the legislation promoting equality, and offers new opportunities for redressing discrimination. In addition, the Equality Act realises the Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Race Equality Directive) and the Council Directive establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive).

3. What is discrimination?

Key words: direct and indirect discrimination, harassment, instruction to discriminate, positive discrimination

The Equality Act prohibits discrimination on the grounds of age, racial or ethnic origin, citizenship, language, religion or belief, opinion, state of health, disability, sexual orientation or other personal characteristics. The Act prohibits direct and indirect discrimination, harassment and instruction or order to discriminate.

Discrimination can be defined as unfair treatment of a person or class of persons in comparison to others, for example, because of their religious beliefs or because they belong to a sexual minority. An individual word or situation can be classified as discriminatory or discrimination may be a result of social structures.

Direct discrimination means that a person is treated less favourably than someone else is, has been or would be treated in a comparable situation.

- An example of direct discrimination is if a member of a restaurant staff refuses to serve a person because of his or her ethnic origin.

Indirect discrimination occurs when a person is put at a particular disadvantage compared with other persons on the basis of a provision, criterion or practice that seems neutral unless the practice can be objectively justified by a legitimate aim.

- An example of indirect discrimination is if an employer demands that a prospective employee has a perfect command of Finnish even though this is not necessary for the job.

Harassment means the purpose or effect of violating the dignity of a person or a group of persons on grounds of prohibited discrimination by creating an intimidating, hostile, degrading, humiliating and offensive environment. The Act prohibits intentional harassment and practices that result in offensive consequences.

- An example of harassment is if a person tells racist jokes with intention to offend or calls a colleague names because of his or her sexual orientation.

Giving an instruction or order to discriminate is also prohibited in the Act. No one is allowed to instruct someone to discriminate.

- An example of the order to discriminate is a situation where a restaurant owner orders his or her employees not to serve a certain ethnic group. The mere instruction is classified as discrimination even if no one would have obeyed it yet.

All unequal treatment is not discrimination. By virtue of the Equality Act, positive discrimination is acceptable if a person is deemed to be in need of special protection on the basis of his or her ethnic origin, age or social status. The aim of positive discrimination is to achieve equality and it must be based on the prevention or alleviation of the adverse effects resulting from verified discrimination.

- An example of positive discrimination is if certain work assignments are reserved for immigrants and doing so aims at combating groundless and significant under-representation of immigrants in a certain occupational sector.

The implementation of the equality plan (see equality plan on page 9) or requiring specific features or skills for certain assignments does not qualify as discrimination.

- For example, a member of an ethnic performance group may be required to have a background in keeping with the group's character.

Different treatment is also acceptable if it based on age and can be derived from employment policy, labour market policy or vocational education and training or if different treatment is a result of age limits adopted for qualification for retirement or disability benefits.

- For example, employment offices may target resources at young people to combat unemployment among young people.



4. How is the law applied?

Key words: pursuit of a profession, recruitment of employees, working conditions, education, membership, social and health services, benefits, military service, housing and other services

The Equality Act contains specific provisions on discrimination on the grounds of ethnic origin. The prohibition of ethnic discrimination is more extensive than discrimination based on some other grounds. The stricter prohibition of discrimination is explained by the contents of the Council Directives underlying the Equality Act.

The Act prohibits discrimination in public and private sectors.

The Equality Act prohibits *all forms of* discrimination in relation to

1) Independent pursuit of profession or means of livelihood and support for business activities

For example, decisions concerning start-up finance or trade permits granted for entrepreneurs must not be discriminatory.

2) Recruitment conditions, working and employment conditions, and promotion

- When recruiting employees, employers must not require such vocational skills or education which are not justified from the viewpoint of work, but rather, can be considered discriminatory.
- When making a recruitment decision, the employer must not rank the applicants differently unless there is a clearly justified basis for this in the job. For example, a parish worker can be required to be a member of the church and the selection of such a person does not qualify as discrimination according to the Act.

- The prohibition of discrimination also applies to decisions related to the allocation of tasks and career advancement during the employment relationship.
- The use of incentives is allowed if the salary system is not otherwise unequally determined.

3) Access to general or vocational education, including advanced vocational training and retraining and vocational guidance

- For example, the student selection criteria, grading system and discipline of pupils and students must not be discriminatory.

4) Membership of or an involvement in an organisation of workers or employers or other trade union

In addition, the Act prohibits the treating of people differently *on the grounds of ethnic origin* in relation to:

1) Social and health services

- A municipality may not treat people differently on the basis of ethnic origin for example, when organising social work, day care for children, hospital care and occupational safety and health services.

2) Social security benefits or other benefits granted on social grounds, rebate or advantages

- Examples of these social security benefits include sickness and unemployment allowance, living allowance and student financial aid.

3) The performance of military service, women's voluntary military service or non-military service

- With regard to military service, anyone who has been granted Finnish citizenship is in the same position as those who are Finnish citizens by birth.

4) Access to and supply of goods and services

- Services mean, for example, installation or repair work, storage, transportation, education and guidance for some other person and, for example, housing services. Ethnic origin may not be used as a basis for restricting financial services (such as credits) or restaurant services.
- The prohibition of discrimination does not, however, cover the relationships between private individuals. For example, the prohibition of discrimination applies to the professional hiring or selling of flats and housing agencies but does not cover selling or hiring of flats between private individuals.

5. Promotion of equality

Keywords: an obligation to promote equality, an equality plan, the participation opportunities of the disabled

The Equality Act increases the authorities' obligations to redress discrimination and to promote equal treatment. According to the Act, the authorities must methodically promote equality in all their activities. Authorities must consolidate such practices that will ensure the fostering of equality in preparatory work and decision-making and alter any circumstances that prevent the realisation of equality. This general obligation to promote equality applies to the central or local government authorities and the authorities of the Evangelic Lutheran Church and the Orthodox Church.

A concrete amendment in the Act is the obligation of the authorities to draw up an equality plan promoting equality. The obligation is also binding for those authorities who are not directly in contact with ethnic minorities in their work. The above-mentioned churches are not, however, obliged to draw up the plan.

The equality plan should include measures which safeguards equal access of ethnic minorities and immigrants to services planned, directed or produced by the authorities. These include interpretation services, brochures in different languages and other information, services in mother tongue, the development of electronic communications and information dissemination.

The equality plan may be a separate plan or a part of some other plan or programme, such as plan on the equality between men and women or an integration programme. The Ministry of Labour provides more specific recommendations on the contents.

The Equality Act pays special attention to the opportunities for the participation of the disabled. The law stipulates that employers and education providers must improve the access of people with disabilities to employment and training. In practice, this means supporting the employment and training opportunities of such disabled groups who are able to perform work tasks or studies by means of reasonable arrangements. This might involve making the working environment more accessible or acquiring personal aid equipment. In assessing what counts as reasonable arrangements, particular attention will be paid to the costs, the financial position of the commissioner of the work or the education provider and the opportunity to apply for public support for necessary alterations.

Building a ramp for an employee with a wheelchair is an example of reasonable arrangements. Building a lift for a disabled employee cannot be regarded as reasonable and therefore, the employer or education provider is under no obligation to do this.

6. Monitoring of the Equality Act

Keywords: occupational safety and health authorities, Ombudsman for Minorities

Discrimination Board

Whatever the basis of discrimination laid down in the Act, the occupational safety and health authorities are in charge of monitoring the Equality Act in relation to employment and public service. Monitoring discrimination on the grounds of ethnic origin beyond employment and public service (social security benefits, services etc.) falls within the responsibility of the Ombudsman for Minorities and Discrimination Board.

Also district courts, where action can be instituted in cases of discrimination and where the victim can claim compensation, monitor the compliance with the Equality Act.

The employer must ensure that the management and decision making at the workplace do not infringe upon equality legislation. Occupational safety and health authorities monitor employers' activities.

The Ombudsman for Minorities may issue guidelines, advice and recommendations. The Ombudsman may be asked to assist in conciliation. This will be assessed in the Ombudsman's office when the client's complaint is being processed.

Any victim of discrimination or victimised person may submit his or her complaint to the Discrimination Board. The Ombudsman for Minorities may also submit the matter to the Discrimination Board.

The Board can confirm conciliation between parties or prohibit any behaviour that violates the prohibition of discrimination. If necessary, the Discrimination Board may order payment of a conditionally imposed fine. The Board does not replace other appeal procedures and it does not have powers to change authority decisions. The Discrimination Board has a chair person, six other members and a secretary. (see Appendix 2)



7. A victim of discrimination is entitled to compensation

Keywords: prohibition of victimisation, compensation, shared burden of proof

In accordance with the Act, no one can be placed in an unfavourable position because of having complained or contacted authorities to safeguard equality. Thus, the prohibition of victimization not only protects victims of discrimination but also other persons who seek to redress discriminatory practices and to promote equality (such as witnesses, counsels, etc.).

The penalty for discrimination continues to be provided for in the Penal Code. The Equality Act, however, contains a concrete revision: a person whose

conduct has violated the Act can be ordered to pay compensation for the injured party (on the grounds of discrimination or victimisation).

Compensation cannot be demanded if the ground of discrimination is language or other personal reasons, such as social standing or financial situation.

In other words, a Sámi who is not served in his or her own language cannot demand compensation.

The Discrimination Board, the Ombudsman for Minorities or occupational safety and health authorities cannot order the compensation to be paid but rather, a victim of discrimination must claim damages at a court of law of his or her domicile within two years of the infringement. If discrimination is continuous, the victim must claim damages within two years of its cessation.

In recruitment situations, action must be taken within one year of the date on which the jobseeker who has been discriminated against receives notification of the recruitment decision.

A mere statement is not a sufficient basis for the claim. The victim of discrimination must present concrete information on the basis of which it can be presumed that he or she has been exposed to discrimination. If there is sufficient evidence, the defendant must demonstrate that he or she has not infringed the prohibition of discrimination. The shared burden of proof is hoped to facilitate the processing of the matter and to encourage more and more people to institute court proceedings on the basis of discrimination.

The maximum amount of compensation is 15,000 euros. When the level of compensation is determined, attention will be paid to the type and extent of discrimination, the attitude of the offender to his or her own action, any reconciliation reached between the parties, and the financial situation of the offender. If deemed reasonable, the maximum sum may be exceeded or the court may choose not to impose compensation.

If discrimination has also resulted in financial damage, the injured party may also claim damages under the Tort Liability Act in addition to compensation. This does not, however, preclude the paying of compensation since compensation is primarily a consequence of the offence suffered by the victim of discrimination, not a compensation for potential financial loss or personal suffering.

8. Processing of discrimination in brief

- how to proceed?

If you have fallen victim to discrimination at work, in an educational establishment, when acquiring services or social security benefits or under some other circumstances provided for in the Act, and if a discussion with the person whose behaviour is discriminatory fails to help, you are advised to:

contact your closest superior, occupational safety and health authorities, the Ombudsman for Minorities or the Discrimination Board or, as a last resort, take legal action.

The following section provides brief examples of the processing, channels of appeal and schedule of discrimination issues governed by the Equality Act.

A) All grounds of discrimination: an example of discrimination at the workplace

- The provisions apply for the duration of and when discontinuing the employment relationship.
 - *What can an employee belonging to a sexual minority do when she or he believes that the promised promotion never takes place because of the employer's prejudice?*

1. Discuss the case with a staff representative or with your closest superior to settle the matter.
2. If needed, contact occupational safety and health authorities: guidance, advice, detailed analysis of the matter.
3. Institute proceedings to claim compensation at the district court *within two years* of the infringement.

B) All grounds of discrimination: an example of discrimination in recruitment

- *What should a disabled jobseeker do when he or she does not get the job even though it can be verified that she or he is most educationally and vocationally qualified?*

1. A notification of (discriminatory) recruitment decision.
2. Contact occupational safety and health authorities: guidance, advice, detailed analysis of the matter.
3. Institute proceedings to claim compensation at the district court *within one year* of the date of the receipt of the notification of the recruitment decision.

C) Discrimination on the grounds of ethnic origin

- The provision applies to discriminatory practices outside employment and public service.
 - *What can a person in need of a flat do when she or he believes s/he has been exposed to discrimination in a council flat queue because of his or her ethnicity?*

1. Discussions between the victim of discrimination (person who seeks the flat) and the offender (local housing authority) to solve the case.
2. Contact the Ombudsman for Minorities: guidance, advice, recommendations, other measures aiming at reconciliation, such as negotiations.
3. Presenting the case at the Discrimination Board: statement, confirming conciliation, prohibition to continue discrimination, conditionally imposed fine.
4. Institute proceedings to claim compensation at the district court *within two years* of the date of the infringement.

9. Further information

The Act on Equality is available on the Internet at:
<http://www.finlex.fi/linkit/sd/20040021>

There is a guide on the Equality Act compiled for authorities which contains information on the Act and its scope of application. You can order the guide and this brochure from the Ministry of Labour. Address: Työministeriö/ MT-tiimi, PL 34, 00023 VALTIONEUVOSTO. They are also available at the website of the education and information on anti-discrimination project STOP <http://www.join.fi/seis/> (in Finnish) and <http://www.join.fi/seis/english/>

If the matter concerns employment and public service, the quickest way to receive help and advice is to contact the occupational safety and health directorate of your own area. There are eight inspectorates:

Hämeen työsuojelupiiri (Occupational Safety and Health Inspectorate of Häme), tel. 03-2608 800, tampere. tsp@tsp.stm.vn.fi
Itä-Suomen työsuojelupiiri (Occupational Safety and Health Inspectorate of Eastern Finland), tel. 017-201 401, ita-suomi.
tsp@tsp.stm.vn.fi
Kaakkois-Suomen työsuojelupiiri (Occupational Safety and Health Inspectorate of Southeast Finland), tel. 05-6264 100,
lappeenranta. tsp@tsp.stm.vn.fi

Keski-Suomen työsuojelupiiri (Occupational Safety and Health Inspectorate of Central Finland), tel. 014-697 211,

jyvaskyla. tsp@tsp. stm. vn. fi

Pohjois-Suomen työsuojelupiiri (Occupational Safety and Health Inspectorate of Northern Finland), tel. 08-3159 511,

oulu. tsp@tsp. stm. vn. fi

Turun ja Porin työsuojelupiiri (Occupational Safety and Health Inspectorate of Turku and Pori), tel. 02-2715 777,

turku. tsp@tsp. stm. vn. fi

Uudenmaan työsuojelupiiri (Occupational Safety and Health Inspectorate of Uusimaa), tel. 09-774 711,

helsinki. tsp@tsp. stm. vn. fi

Hämeen työsuojelupiiri (Occupational Safety and Health Inspectorate of Häme), tel. 03-2608 800, tampere. tsp@tsp. stm. vn. fi

Further information on Occupational Safety and Health Inspectorate on the Internet at **<http://www.tyosuojelu.fi>**.

On other matters concerning ethnic discrimination, please contact the Office of the Ombudsman for Minorities, tel. 09- 160 470 48, e-mail: vahemmistovaltuutetun. toimisto@mol. fi

The address of the Discrimination Board

Syrjintälautakunta

PL 34

00023 VALTIONEUVOSTO

Discrimination Board, e-mail: syrjintalautakunta@mol. fi

Further information on Discrimination Board on the Internet at **www.mol.fi/syrjintalautakunta/**

Appendix 1. Some views on the Equality Act – three aspects

The Equality Act is first and foremost a practical tool enabling the victim of discrimination to do something about his or her treatment.

In the section below, three persons describe how they view the opportunities provided by the law, how the law should be utilised and how well it helps to prevent discrimination.

1. Was the new Act necessary?

Jussi Nissinen, Secretary General, SETA - Sexual Equality in Finland

“There was a clear need and demand for the Equality Act. The threshold for applying the prohibition of discrimination under the Penal Code has been too high. The Act offers more ways to redress discrimination.”

Pirkko Mahlamäki, Secretary General, the Finnish Disability Forum

“The Act was necessary since the prohibitions of discrimination laid down in the Constitution have thus far not been sufficiently incorporated into special legislation.”

Pekka Aikio, Chairman, the Sámi Parliament

“The Equality Act is very necessary. It is a new tool to eliminate the everyday discrimination which often goes unnoticed.”

2. The strengths and weaknesses of the Act

Jussi Nissinen

“Firstly, shared burden of proof is extremely important. The second strength of the Act is that it clarifies and brings to the fore the obligations of occupational safety and health authorities and their central role in discrimination issues. Thirdly, it is very good that the concept harassment is also incorporated into the Act: it ought to improve the ways to redress harassment more efficiently.

The unequal position of different grounds of discrimination, however, is one of its weaknesses. For example, regarding services, the Act can only be applied in cases of ethnic discrimination restricting the mandate of the Ombudsman for Minorities and the Discrimination Board to ethnic discrimination only.”

Pirkko Mahlamäki

“The Equality Act is the first step towards equality. Although equality issues are often tackled from the viewpoint of equality between men and women, the Equality Act explicitly states that the concept also includes other minorities. Furthermore, the Act incorporates the EU concepts, often felt to be complicated, into national legislation and includes positive special measures to improve the position of minorities.

We have pondered, however, what are the concrete consequences for the disabled. The Act mentions that if necessary, reasonable steps must be taken to help a person with disabilities to gain access to work or training. The term 'reasonable' is ambiguous as such and it could be questioned whether this kind of aspect can be applied in relation to the implementation of fundamental rights.”

Pekka Aikio

“The Act will support the right of the Sámi to their own identity and culture. I find the division between discrimination and positive discrimination an especially good feature since this enables the targeting of support at those who are most vulnerable.

The obligation of the authorities to design an equality plan to eliminate ethnic discrimination is also a good thing and I hope that these plans are drawn up and put into practice. The plans should include positive special measures to improve the position of our indigenous people, the Sámi, and to safeguard the continuation of the traditional Sámi ways of livelihoods.

Excluding language as a basis for compensation must be a question of costs and I hope this situation will improve over time.”

3. Does the Act help to combat everyday discrimination?

Jussi Nissinen

“Discrimination experienced by sexual and gender minorities is often indirect and they might find it difficult to provide evidence. Nevertheless, discrimination is common in working life.

It is important that people be aware of the contents of the Equality Act and the opportunities provided by it; otherwise it will become a mere dead letter. I hope that the Act will be enforced and that people would stop and think about their own behaviour and treatment more often than they do now.”

Pirkko Mahlamäki

“People with disabilities face discrimination daily. Often it is simply a question of not being able to gain access to places where they would want to go. Given the structural and attitudinal nature of discrimination, people find it difficult to identify. Many are so accustomed to being discriminated against that they even fail to notice it. Many qualified persons sit at home because of their disability and lack opportunities to show their skills. I believe that the Act will be enthusiastically welcomed at first but I also believe that expectations easily exceed the scope of law in practice.”

Pekka Aikio

“In Finnish legislation, the traditional livelihoods of the Sámi, such as reindeer herding and fishing are in unequal position in comparison with other forms of income. Discrimination faced by the Sámi is mostly structural, financial discrimination which takes place in relation to these livelihoods. The media portrays the Sámi negatively in the news and entertainment shows, which thus create a hostile atmosphere. There are no children’s TV programmes in the Sámi language even though they are available, for example, in Norway.

The traditional livelihoods help to foster the linguistic richness of the Sámi language and therefore it would be important to nurture them. Owing to their high degree of assimilation into the mainstream population, the ‘ordinary’ Sámi, that is, those not earning their income from reindeer herding, are less exposed to discrimination. I believe that the Equality Act is particularly beneficial for those who practice traditional livelihoods and that it helps to strengthen their position and rights.”

Appendix 2

The members of the Discrimination Board

The first Discrimination Board was appointed on 19 February 2004. The term of the board is four years.

The chair of the Discrimination Board is Mr Jukka Lindstedt, Legislative Counsellor, LL.D. from the Ministry of Justice and the vice-chair is Ms Vilja Kutvonen, District Prosecutor (Helsinki Prosecution Unit), Senior Lawyer. Mr Tapio Susi, Senior Lawyer from the Ministry of Labour is the Secretary of the Board.

Other members of the Board:

Mr Markku Fredman, Asianajotoimisto Fredman & Månsson Oy (law office)
Ms Thea Lång, Helsinki Court of Appeal
Mr Juhani Kortteinen, University of Helsinki
Ms Inga Jasinskaja-Lahti, University of Helsinki
Mr Adrián Soto, reporter

Deputy members:

Ms Marja Vanamo, Joensuu Prosecution Unit
Ms Kirsi Tarvainen, Asianajotoimisto Asianaiset (law office)
Mr Jukka Rainio, Tuusula District Court
Mr Timo Makkonen, Åbo Akademi Institute for Human Rights
Ms Karmela Liebkind, University of Helsinki
Mr Ahmed Akar, International Cultural Centre Caisa