

**RACISM AND LEGAL PROTECTIONS IN FINLAND FROM THE CRITICAL
RACE THEORY PERSPECTIVE**

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ABSTRACT

My paper assesses the adequacy of legal protections against racism in Finland as it has consistently been found to be the most racist country in Europe. I use Critical Race Theory as my methodology, relying especially on color-blindness to explain the Nordic and Finnish tactics of suppressing discussions about societal racism. I begin with a historical examination of colonialism in Europe, the Nordic countries and Finland, establishing it as the basis for their racism. In terms of legal protections within the international human rights framework, I examine the effects of two monitoring bodies, the Committee on the Elimination of Racial Discrimination and the European Commission against Racism and Intolerance, finding ECRI to be more useful for enforcing human rights standards through the European Union. Considering criminal and civil domestic legislation in Finland especially through their implementation, I conclude that both legislative means present shortcomings. Bringing criminal cases against racism is hindered by the police's color-blindness in detecting a racist motivation as an aggravating factor while the Non-Discrimination Ombudsman is too under-resourced to protect racialized people's individual rights through anti-discrimination law.

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1. INTRODUCTION

Finland has been consistently found to be the most racist country in Europe. 62 percent of people of African descent have experienced racist harassment, which is more than twice the European average.¹ In the survey's previous version, Finland came in as the second most racist country in Europe. Yet, despite its well-established racism, Finland maintains its image as one of the most progressive countries in the world from the perspective of protecting human rights. The incongruence warrants asking whether Finland provides sufficient legal protections for racialized people against the harassment they inevitably face.

Due to its usefulness for considering race in a legal context, I use the broad methodology of Critical Race Theory (CRT), conceptualized by Richard Delgado and Jean Stefancic as, *inter alia*, providing a greater understanding of race and racism's underpinnings.² As Delgado and Stefancic also allow for extending CRT to related fields like history,³ my exploration of European, Nordic and Finnish colonial history in the first chapter is an appropriate foundation for considering forms of European racism. After establishing colonial history as foundational for European racism, I consider how the outcome of this embedded racism in insufficient legal protections, identifying problems with legal frameworks with more specificity in chapters on international and domestic legal frameworks. Throughout the capstone project, I refer to CRT concepts as needed, relying especially on the explanatory power of color-blindness, which refers to suppressing discussions about racism to the detriment of racialized people whose experiences and valid criticisms are sidelined.⁴ While generally harmful to racialized people, I consider it to also prevent access to legal protections in the Finnish legal context.⁵

¹ European Union Agency for Fundamental Rights, "Being Black in the EU: Second European Union Minorities and Discrimination Survey" (Publications Office of the European Union: 2018), <https://fra.europa.eu/en/publication/2018/being-black-eu> (accessed March 3, 2022): 9.

² Richard Delgado and Jean Stefancic, "Critical race theory: An annotated bibliography," *Virginia L. Rev* (1993): 462.

³ Richard Delgado and Jean Stefancic. *Critical race theory: An introduction*, Vol. 20 (NYU Press: 2017): 3.

⁴ Neil Gotanda, "A critique of our constitution is color-blind," *Stan. L. Rev.* 44 (1991): 1-68.

⁵ By exploring the non-specialized legal framework, I explore colonialism as it continues to affect racialized people in Finland generally rather than considering specific minorities like the Sámi, although they were foundational to establishing Finnish colonialism within its borders.

2. EUROPEAN, NORDIC AND FINNISH COLONIALISMS AS A BASIS FOR RACISM

2.1 Europe

I consider Europe only briefly as the background to the Nordic relationship to race. Mathias Möschel foundationally identifies color-blindness and racial skepticism as the European way of conceptualizing race and racism;⁶ as I argue in the next section, despite their differently colonial histories, this tactic is also employed by Nordic countries to maintain an image as even more detached from racism.

The increasing attention to racism in Europe has brought attention to its sources. As Etienne Balibar and others have noted in, colonialism formed the foundation for European racism.⁷ Yet European countries like France and Europe consider racism to be exceptional in contrast to its prevalence in countries like the United States.⁸ Despite participating in the invention and spread of colonialism, this history is supposed to not have had the same effect of fostering racism as it did in other countries.⁹ In the German context, this exceptionalism manifests itself in regarding the Holocaust as a singular event to which racism is confined, resulting in an inability to recognize race as pre- and post-dating the Nazi racial ideology.¹⁰ In France, discussions about race, rather than unaddressed racism, are seen as perpetuating racism and inequality, which undermines any attempts at achieve “optimal substantive equality.”¹¹ This exceptionalism amounts to color-blindness considering the prevalence of racism also in these countries, leading to an inability to address racism through legal protections.¹² Rather, any attempts to confront racism in these countries is met with

⁶ Mathias Möschel, *Law, lawyers and race: critical race theory from the US to Europe* (Routledge: 2014): 96.

⁷ Etienne Balibar and Immanuel Maurice Wallerstein, *Race, nation, class: Ambiguous identities* (Verso: 1991): 21.

⁸ Möschel, *Law*: 92.

⁹ Emilia Roig, “Uttering ‘race’ in colorblind France and post-racial Germany,” in *Rassismuskritik und Widerstandsformen* Springer VS, Wiesbaden, 2017: 64.

¹⁰ Cengiz Barskanmaz, “Rassismus, Postkolonialismus und Recht—Zu einer deutschen ‘Critical Race Theory’?,” *Kritische Justiz* 41, no. 3 (2008): 300.

¹¹ Eddie Bruce-Jones. “Race, space, and the nation-state: racial recognition and the prospects for substantive equality under anti-discrimination law in France and Germany.” *Colum. Hum. Rts. L. Rev.* 39 (2007): 646.

¹² Ibid: 646-645.

racial skepticism.¹³ I note that these mechanisms of denials also are at the heart of Nordic exceptionalism, which similarly relies on denying their colonial histories. Yet Nordic countries have also fostered reputations as human rights defenders,¹⁴ making their failings more glaring. Accordingly, I consider what is known as Nordic exceptionalism to have strengthened racism and weakened legal protections in Nordic countries as they do not acknowledge racism as a genuine societal influence that would need to be addressed.

2.2 Nordic countries and Nordic exceptionalism

Scholars disagree on whether Nordic countries have been part of the general European project of establishing white Europeans' superiority historically and in the present.¹⁵ Nordic countries also have a colonial history with countries like Sweden and Denmark establishing colonies almost globally; scholars, recognizing this colonialism to have taken place on a smaller scale, have characterized it as "colonial complicity."¹⁶ Yet due to this history, some consider Nordic countries to be aligned with other European countries while others note how they have distanced themselves to maintain their irreproachability.¹⁷ I consider Nordic countries to have succeeded in distinguishing themselves from other European countries while benefitting from their image as different in the sense of being superior. Indeed, Nordic countries therefore exemplify European modernity's ideals through its desirable qualities—such as whiteness—maintaining a relationship through superiority while distancing themselves from the colonialism with which most European countries are increasingly associated.¹⁸ Historically, Nordic people have therefore always benefitted from European scientific racism, as it has held them to be an epitome of idealized whiteness. Grouped together as a "race

¹³ Möschel, *Law*: 96.

¹⁴ Hanne Hagtvedt Vik, Steven LB Jensen, Linde Lindkvist, and Johan Strang, eds. *Nordic histories of human rights*, (Routledge: 2020): 6.

¹⁵ Peter Hervik, "Racialization in the Nordic countries: An introduction," in *Racialization, racism, and anti-racism in the Nordic countries* (Palgrave Macmillan, Cham: 2019): 17.

¹⁶ Ulla Vuorela, "Colonial complicity: The 'post-colonial' in a Nordic context," in *Complying with colonialism: Gender, race and ethnicity in the Nordic region*, edited by Keskinen, Suvi, Salla Tuori, Sara Irni, and Diana Molinari (Routledge: 2016).

¹⁷ Suvi Keskinen, Salla Tuori, Sara Irni, and Diana Molinari, eds. *Complying with colonialism: Gender, race and ethnicity in the Nordic region* (Routledge: 2016): 35.

¹⁸ See, *inter alia*, Paul Gilroy, *The black Atlantic: Modernity and double consciousness* (Harvard University Press: 1993).

nordique” in the racial classification by a French anthropologist and affirmed by others,¹⁹ Nordic people were considered a particularly white race.²⁰ As a result of this history, “Nordic” is practically synonymous with whiteness, which I argue continues to distinguish Nordic countries as superior. Celebrations of Nordic countries are therefore also celebrations of their historically embedded whiteness rather than merely well-functioning societies. This has made Nordic countries not only the exception to but also the backbone of still lingering racial ideologies²¹—a position it has retained.

Whiteness has remained a useful tool for Nordic countries as is evident especially in the concept of Nordic exceptionalism. Ole Wæver coined the term to characterize Nordic societies as better and better off than other European countries due to their “caring” societies and promotion of human rights that makes them into “moral superpowers.”²² While this moral superiority in foreign policy can be seen as remaining central to the Nordic identity, I consider modern Nordic exceptionalism also in racial terms familiar from the region’s history:²³ since scientific racism was crucial to European history, Nordic exceptionalism amounts to being superior to other European countries and globally because they are perceived as extraordinarily white.²⁴ This has also helped Nordic countries overcome their geographic marginalization other than through their progressive values. My version of Nordic exceptionalism therefore aligns with Gloria Wekker’s concept of white innocence, according to which a Northern European country’s self-image is predicated on not acknowledging its colonial history or its current, pervasive racism.²⁵ Much like with other progressive European countries, this allows Nordic countries to see themselves as self-constructed egalitarian

¹⁹ Steve Garner, “Injured nations, racialising states and repressed histories: Making whiteness visible in the Nordic countries,” *Social Identities* 20, no. 6 (2014): 408.

²⁰ Lundström and Teitelbaum, *Nordic*: 151.

²¹ Ibid: 152.

²² Mathias Danbolt, “New Nordic Exceptionalism: Jeuno JE Kim and Ewa Einhorn's The United Nations of Norden and other realist utopias,” *Journal of Aesthetics & Culture* 8, no. 1 (2016): 5-6.

²³ Koivunen and Rastas, “Suomalaisen”: 429. Koivunen and Rastas also refer to the possibility of conceptualizing exceptionalism in Finland in terms of its relationship to race, but do not explore the concept in depth.

²⁴ Anna Rastas develops the concept of Nordic exceptionalism similarly to white innocence: “self-ascribed innocence underlying naive national self-images regarding the colonial complicities of these countries and the denials of the existence of racism.” See Anna Rastas, “The Emergence of Race as a Social Category in Europe,” in *Relating Worlds of Racism: Dehumanization, Belonging, and the Normativity of European Whiteness*, edited by Philomena Essed, Karen Farquharson, Kathryn Pillay and Elisa Joy White (Palgrave Macmillan: 2019): 358.

²⁵ Wekker, Gloria, “White innocence,” in *White innocence* (Duke University Press: 2016): 17.

societies.²⁶ Additionally, I argue that Nordic white innocence continues to shelter these countries from being held accountable through examinations of their domestically perpetuated human rights violations. This notion of a society's superiority correlating with whiteness ultimately promotes white supremacy, which helps to explain how the supposedly innocuous Nordic region has also become a site of racialized violence.²⁷ This is evident in Finland where racialized people experience racist violence at the highest rates in Europe.²⁸

I conclude this section by noting that the investment in whiteness combined with denying the continued relevance of colonialism and racism has made color-blindness a relevant term also in the Nordic context.²⁹ Successfully denying colonialism explains the applicability of color-blindness to Nordic countries as, beyond historiography, they also apply to their current racism despite, *inter alia*, Denmark being found to be the third most racist country in Europe.³⁰ Coined by Neil Gotanda, color-blindness allows for discussing the non-recognition of race and ignoring the harm it causes, thus voiding the need for accompanying action.³¹

2.3. The Finnish exception to Nordic exceptionalism

While Nordic countries share a common investment in colonialism, they also can also be conceived in terms of “colonialisms,” following Suvi Keskinen’s theory of the countries as having their own “internal hierarchies and contingencies” that shaped the societies differently.³² I consider Finland through the forms of exceptionalism that distinguish it from other Nordic countries and make

²⁶ Gail Lewis, “Unsafe travel: Experiencing intersectionality and feminist displacements,” *Signs: Journal of Women in Culture and Society* 38, no. 4 (2013): 877.

²⁷ Garner, “Injured”: 412.

²⁸ European Union Agency for Fundamental Rights, “Being Black in the EU: Second European Union Minorities and Discrimination Survey,” Publications Office of the European Union, 2018, <https://fra.europa.eu/en/publication/2018/being-black-eu> (accessed March 3, 2022): 9

²⁹ Catrin Lundström and Benjamin R. Teitelbaum, “Nordic whiteness: An introduction,” *Scandinavian Studies* 89, no. 2 (2017): 156. For its application in the Finnish context, Mira Kallio-Tavin, “Candy and cake: Criticizing Finnish and Nordic Whiteness,” in *5th Conference on Arts-Based Research and Artistic Research* (2018): 3.

³⁰ Jeff Diamant and Kelsey Jo Starr, “Western Europeans vary in their nationalist, anti-immigrant and anti-religious minority attitudes,” Pew Research Center, June 19, 2018, <https://www.pewresearch.org/fact-tank/2018/06/19/western-europeans-vary-in-their-nationalist-anti-immigrant-and-anti-religious-minority-attitudes/> (accessed May 12, 2022).

³¹ Gotanda, “Critique”: 16-18.

³² Suvi Keskinen, “Intra-Nordic differences, colonial/racial histories, and national narratives: Rewriting Finnish history,” *Scandinavian Studies* 91, no. 1-2 (2019): 167.

its racism particularly pervasive. One such dynamic was Finland's colonization by Sweden until 1809 when Russia took over until Finland's independence in 1918. I argue that being subjected colonialism by another Nordic country and Russia has left Finland with a sense of victimization it uses to negate accusations of racism.³³ Rather than seeing themselves as colonizers, Finns see themselves as a historically "beleaguered white population,"³⁴ which prevents acknowledging racialized people's current victimization.

Yet Finnish history is also defined by colonialism with Finland as its perpetrator. However, beyond the Sámi,³⁵ this colonial history has been effectively suppressed. This was evident in comments made in 2020 by the Finnish politician Jutta Urpilainen who, while serving as the Commissioner for International Relation in the European Commission, stated that Finland was an outsider to the European discussion about the legacy of colonialism because it had not participated in it.³⁶ This obscures the reality of Finnish colonialism, which was global and geographically diverse: for instance, Finns helped Swedes found the "New Sweden" colony along the Delaware river in the United States, signed up to occupy St. Barthélemy in the eighteenth century and established a long-standing missionary presence in present-day Namibia in 1870.³⁷

In light of this history, rather than consider Finland as innocuous, I consider it to have externalized colonialism as a phenomenon with relevance to other countries only.³⁸ This attitude toward colonialism reflects what Mathias Möschel has identified as a typical European means of dealing with racism: by externalizing it as normal to countries like the United States, the issue is

³³ Salman Sayyid, "Islamophobia and the Europeanness of the Other Europe," *Patterns of Prejudice* 52, no. 5 (2018): 433. Finland shares this sense of victimization and accompanying explanations for white innocence with Eastern European countries formerly occupied by Russia or the Soviet Union.

³⁴ Garner, "Injured": 418.

³⁵ On the Sámi and colonialism, see, *inter alia*, Jukka Nyysönen, "'Everybody recognizes that we are not white: Sami and Identity Politics in Finland, 1945-1990,' Ph.D. diss., The Arctic University of Norway, 2007; Veli-Pekka Lehtola, "Sámi Histories, Colonialism, and Finland," *Artic Anthropology* 52 no. 2 (2015): 22-36.

³⁶ Sari Taussi and Erja Tuomaala, "Afrikka-komissaari Jutta Urpilainen toivoo avointa keskustelua Euroopan siirtomaa-ajasta: Patsaiden turmelu osoittaa, että keskustelu on vielä käymättä monissa maissa" ["'Africa Commissioner' Jutta Urpilainen hopes for an open dialogue about European colonialism: Defiling statutes shows that the discussion is yet to be had in many countries"], *Yle*, July 4 2020, <https://yle.fi/uutiset/3-11429984> (accessed May 20, 2022).

³⁷ Raita Merivirta, Leila Koivunen, and Timo Särkkä, "Finns in the Colonial World," in *Finnish Colonial Encounters*, Palgrave Macmillan, Cham, 2021: 15-21.

³⁸ Leila Koivunen and Anna Rastas, "Suomalaisen historian tutkimuksen uusi käänne?: Kolonialismikeskustelujen kotouttaminen Suomea koskevaan tutkimukseen" ["A new turn for Finnish historiography?: Domesticating colonialism discourses in Finnish research"], *Historiallinen aikakauskirja* 118, no. 4 (2020): 428.

rendered virtually unheard of in Europe.³⁹ With European colonialism's emergence, Finland takes the same approach to colonialism to close off the possibility of excavating its colonial history. Only recently Miika Tervonen has observed that colonialism was central to Finland's nation building.⁴⁰ This relatively successful historical suppression mechanism can therefore be seen as forming the basis for Finland's use of color-blindness as the mechanism also for dealing with discussions about racism. Consequently, the simultaneous suppression of colonial history and racism contributes to Finland also maintaining its own version of white innocence that does not recognize its part in perpetuating colonialism or acknowledge racism as embedded in its society.

Exceptionally for a Nordic country, Finnish people have not always been considered white, causing long-standing efforts to overcome racial ambiguity that have contributed to the country's racism. Specifically, the French Arthur Comte de Gobineau influentially classified Finns as belonging to the "yellow race" between Indo-Europeans and Africans; later, Finns were falsely linked to Mongolians.⁴¹ Finnish people further contributed to their racialization by their efforts to disprove it, validating a scientifically racist theory in the process.⁴² Through these misinterpretations and counter-efforts, Finns became ambiguously racialized to such an extent that their colonial projects would also serve to produce a colonial knowledge of Africans, allowing Finns to define themselves against racialized Others.⁴³ That Finland's racism stems from its colonialism is evident in how its most long-lasting colonial engagements took place in Africa and how persons of African descent continue to suffer from racism at higher rates than persons from other backgrounds.⁴⁴ Persons of African descent in particular are therefore conditionally incorporated into Finland's domestic order as serving the particular function of helping in Finns' self-construction as white. Finland's exceptional racism can

³⁹ Möschel, *Law*: 92.

⁴⁰ Miika Tervonen, "Historiankirjoitus ja myytti yhden kulttuurin Suomesta" ["Historiography and the myth about monocultural Finland"], in *Kotiseutu ja kansakunta: miten suomalaista historiaa on rakennettu*, edited by Pirjo Markkula, Hanna Snellman and Ann-Catrin Östman (SKS: 2014) 142.

⁴¹ Merivirta, Koivunen, and Särkkä, "Finns": 27. Gobineau's essay was published in "Essai sur l'inégalité des races humaine" in four parts between 1853 and 1855.

⁴² Edward Dutton, "Battling to be 'European': Myth and the Finnish Race Debate," *Antrocom* 4, no. 2 (2008).

⁴³ Merivirta, Koivunen, and Särkkä, "Finns": 30.

⁴⁴ Simo Mannila, "Syrjintä Suomessa 2017-2019" ["Discrimination in Finland, 2017-2019"], *Oikeusministeriön julkaisuja, Selvityksiä ja ohjeita* 2020:20 (Oikeusministeriö: 2020): 21.

therefore also be traced to its history of being subjected to denigrating racial classifications that made Finland's hold on whiteness tenuous and caused it to assume a racially defensive posture.

Finland's history of colonialism is crucial for explaining how Finland became structurally racist also in the law. Not addressing racism through legal protections has also allowed Finland to maintain its image as a human rights defender while instituting legal protections would serve to acknowledge Finnish racism, which would fracture its self-image as racially innocent. However, this historical consideration shows racism to be a homegrown phenomenon for which Finland should be held accountable. Against this background, I consider the adequacy of legal protections available to racialized people subjected to racism in Finland.

3. INTERNATIONAL LEGAL FRAMEWORK

CRT scholars have found that international human rights law consistently marginalizes racism as a human rights issue,⁴⁵ which has led to it not being sufficiently addressed as a human rights violation. Nevertheless, international human rights monitoring bodies can provide a check on domestic legislative framework addressing racism. I consider the work of two international human rights bodies, the UN's Committee on the Elimination of Racial Discrimination (the CERD) Committee and the European Commission against Racism and Intolerance (ECRI), with a focus on the institutional factors affecting their effectiveness.

3.1 The United Nations: The Committee on the Elimination of Racial Discrimination

CRT scholars have generally found the UN to be ineffective due to international law's remnant coloniality and powerful western states' ability to protect themselves from a thorough

⁴⁵ See, *inter alia*, Anna Spain Bradley, "Human rights racism," *Harv. Hum. Rts. J.* 32 (2019); Tendayi E. Achiume, "Transnational Racial (In) Justice in Liberal Democratic Empire," *Harv. L. Rev. F.* 134 (2020) and "Putting racial equality onto the global human rights agenda," *SUR-Int'l J. on Hum Rts.* 28 (2018); Makau Mutua, "Savages, victims, and saviors: The metaphor of human rights," *Harv. Int'l LJ* 42 (2001) and scholarship stemming from the Third World Approaches to International Law (TWAIL) movement.

scrutiny of their human rights situation.⁴⁶ Yet the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is the most widely ratified UN treaty⁴⁷ and therefore retains genuine potential for addressing racism globally. This also makes the CERD as the treaty body enforcing it potentially powerful through monitoring. I therefore consider the effect of the CERD's state reviews as they generate targeted recommendations that can take into consideration Finland's particular failings and therefore presents a seemingly effective means of securing legal protections.

3.1.1 Factors Contributing to Finland's Responsiveness to the UN and the CERD

As a well-known human rights defender, Finland has long been a model member of the United Nations. Finland's participation in the UN intensified throughout the 1990s, and the Chair of the Human Rights Council noted its commitment to human rights as exemplary already in 1998.⁴⁸ Even compared to other human rights-friendly states, Finland remains exceptionally committed to the UN, evident in how frequently it accepts and addresses the non-binding Concluding Observations produced as part of state reviews.⁴⁹ This can be attributed to, *inter alia*, governmental authorities' genuine belief the reporting process and the value Finns place in human rights,⁵⁰ signaling that human rights values penetrate all aspects of society. Moreover, in terms of addressing domestic human rights violation, human rights are also incorporated into Finnish domestic politics as they are commonly used in public discourse for justifying policy decisions.⁵¹ Furthermore, Finland signaled its specific commitment to the ICERD when it not only ratified it like other Nordic countries but also transposed it into its legal framework.⁵² Finland also used the ICERD as the basis for its anti-discrimination

⁴⁶ For recent commentary, see Tendayi E. Achiume, "Black Lives Matter and the UN Human Rights System: Reflections on the Human Rights Council Urgent Debate," EJIL!Talk, December 15, 2020, <https://www.ejiltalk.org/black-lives-matter-and-the-un-human-rights-system-reflections-on-the-human-rights-council-urgent-debate/> (accessed May 12, 2022).

⁴⁷ United Nations Treaty Body Database, "Ratification Status for CERD - International Convention on the Elimination of All Forms of Racial Discrimination," https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CERD (accessed June 2, 2022).

⁴⁸ Jasper Krommendijk, "Finnish exceptionalism at play? The effectiveness of the recommendations of UN human rights treaty bodies in Finland," *Nordic Journal of Human Rights* 32, no. 1 (2014): 35.

⁴⁹ Ibid: 32.

⁵⁰ Ibid: 34.

⁵¹ Mia Halme-Tuomisaari, *Human Rights in Action: Learning Expert Knowledge* (Brill: 2020): 29-30.

⁵² Ibid, 21.

legislation before the EU-imposed standards and has remained engaged with the ICERD as it recently reviewed its criminal law measures against racism in light of the Convention.⁵³ These factors indicate that racism in Finland could be somewhat ameliorated through the CERD's recommendations.

Yet Finland has also shown reluctance in responding appropriately, especially in terms of instituting legal protections. In reviewing its Criminal Code, Finland ultimately rejected the notion of making changes, even though the CERD highlighted importance of taking measures against hate crimes.⁵⁴ Moreover, the CERD first requested information about the frequency of racism-related judicial proceedings as proof of their accessibility already in 1971,⁵⁵ but only received it as part of Finland's state submission in 2021.⁵⁶ These responses to recommendations show Finland's long-standing resistance to even acknowledge the need for greater legal protections. Notably, the CERD cannot leverage factors as Finland is not known for its racism as it had only received 46 racism-related recommendations in the Universal Periodic Review processes compared to the 159 recommendations received by Sweden.⁵⁷ Efforts by treaty bodies also notably receive less attention than those by the HRC⁵⁸ and have can only make diminished use of the "naming, shaming and faming" tactics common to human rights monitoring.⁵⁹ From the CRT perspective, the CERD's ineffectiveness can also be attributed to the international human rights community's long-standing

⁵³ Janne Kanerva, "Arviomuistio järjestäytynyttä rasismia koskevasta riksolain säännöksistä" ["An evaluative memorandum about the Criminal Code statutes concerning organized racism"], OM028:00/2019 (The Finnish Ministry of Justice: 2020): 3.

⁵⁴ Committee on the Elimination of Racial Discrimination, "Concluding observations on the twenty-third periodic of Finland," The United Nations, CERD/C/FIN/CO/23: 3.

⁵⁵ Committee on the Elimination of Racial Discrimination, A/8418, 26th No. 18, The United Nations, 1971, http://www.bayefsky.com/html/finland_t4_cerd.php (accessed May 29, 2022).

⁵⁶ Krista Oinonen, "Combined twenty-fourth, twenty-fifth and twenty-sixth periodic reports submitted by Finland under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, due in year 2021," (The Finnish Ministry of Foreign Affairs: 2021): 29.

⁵⁷ UPR Info Database, "Racism-related recommendations received by Finland," [https://upr-info-database.uwazi.io/en/library/?q=\(allAggregations:!f,filters:\(issues:\(values:!\(%276922f29e-0cc8-4524-9169-88b221b4d61a%27\)\)\),state_under_review:\(values:!\(%275yhdr5vyugh%27\)\)\),from:0,includeUnpublished:!f,limit:30,order:desc,sort:creationDate,types:!\(%275d8ce04361cde0408222e9a8%27\),unpublished:!f](https://upr-info-database.uwazi.io/en/library/?q=(allAggregations:!f,filters:(issues:(values:!(%276922f29e-0cc8-4524-9169-88b221b4d61a%27))),state_under_review:(values:!(%275yhdr5vyugh%27))),from:0,includeUnpublished:!f,limit:30,order:desc,sort:creationDate,types:!(%275d8ce04361cde0408222e9a8%27),unpublished:!f) (accessed May 3, 2022).

⁵⁸ Patrick Thornberry, "Confronting Racial Discrimination: A CERD Perspective," *Human Rights Law Review* 5, no. 2 (2005): 261.

⁵⁹ Jasper Krommendijk, "The domestic effectiveness of international human rights monitoring in established democracies: The case of the UN human rights treaty bodies," *The Review of International Organizations* 10, no. 4 (2015): 493.

indifference to racism, which has meant that not taking action against racism as not jeopardized its role as a moral superpower.⁶⁰

From a legal perspective, the CERD suffers from a lack of legal authority in instituting change. The CERD does not sufficiently draw the reasoning for its recommendations from the ICRED, which would give its recommendations a legal basis and credibility, encouraging compliance. The CERD's recommendations also lack calls for specific action, which can lead states to turn to European standards or not take action at all.⁶¹

3.1.2 Finland's Response to the CERD's Recommendations

Finland has responded by appearing to take action. The CERD's inconclusive recommendations have elicited an equally fragmentary response. Finland's first-ever anti-racism action plan, "An Equal Finland," published in October 2020, only responds to racism through singular measures in response to disparate issues.⁶² This mirrors the CERD's approach of excessively focusing on discrete issues without always further contextualizing their relevance socially or historically. CRT calls for any action against societal racism to be contextualized through socio-historical consideration to avoid formalistic interpretations that only create an appearance of progress.⁶³ Moreover, the Finnish plan has found inspiration in the nebulousness of the CERD's calls for action, similarly calling for more information or making poorly defined general commitments.⁶⁴ I observe that, although the CERD's recommendations have had some effect since they are briefly referenced in the action plan,⁶⁵ it is to a limited extent. Both the CERD and the Finnish plan lack the philosophical and historical basis for anti-racism CRT could also provide to present it as necessary. An explicit discussion of historically embedded racism would therefore also assist in countering Finland's

⁶⁰ Hanne Hagtvedt Vik, Steven LB Jensen, Linde Lindkvist, and Johan Strang, "Histories of Human Rights in the Nordic Countries," *Nordic Journal of Human Rights* 36, no. 3 (2018): 193.

⁶¹ Krommendijk, "Domestic": 492.

⁶² The Finnish Ministry of Justice, "An Equal Finland: Government Action Plan for Combating Racism and Promoting Good Relations between Population Groups," *Publications of the Ministry of Justice, Memorandums and statements 2* (The Finnish Ministry of Justice: 2022).

⁶³ Möschel, *Law*: 8.

⁶⁴ The Ministry of Justice, "Equal": 55-66.

⁶⁵ Ibid:18.

embedded color-blindness in governmental policies and more generally establish Finland as a racist country where racialized people are in need of greater legal protections.

3.2. The European Union: The European Commission Against Racism and Intolerance

ECRI was founded in 1993 to monitor issues relating to “racism, discrimination [on racial or gender-based grounds], xenophobia, antisemitism and intolerance.”⁶⁶ As the human right monitoring body of the Council of Europe, ECRI performs targeted state monitoring tasks similar to those of other international human rights bodies, but with the goal of supporting the EU’s work against racism.⁶⁷ While ECRI’s recommendations could be similarly ineffective as recommendations from the CERD, ECRI benefits from its relationship to the EU. ECRI’s increased effectiveness is the focus of this section in relation to hate crime as a priority for both ECRI and the EU and as a particular problem for Finland.

The EU’s anti-racist efforts are heavily focused on concrete measures against hate crimes, meaning that it prominently features hate crime measures as a solution to racism in the Anti-Racism Action Plan 2020-2025.⁶⁸ Its zeal is also evident also in its recent suggestion to add hate crimes and hate speech to the list of especially serious “EU crimes,”⁶⁹ which would enable the EU to become more involved in legislating against them. Notably, the EU’s attempts to use these measures in Member States “to address racism more effectively and build a life free from racism for all”⁷⁰ despite lacking the proper competence over national criminal legislation. Nevertheless, the EU’s commitment to the issue appears promising for the efforts’ future due to the EU’s general influence over national legislation.⁷¹ In turn, ECRI lends the EU the legitimacy of human rights efforts through

⁶⁶ ECRI, “ECRI: European Commission Against Racism and Intolerance,” <https://rm.coe.int/leaflet-ecri-2019/168094b101> (accessed June 1, 2022).

⁶⁷ Erica Howard, “Anti race discrimination measures in Europe: An attack on two fronts,” *European Law Journal* 11, no. 4 (2005): 469.

⁶⁸ The European Commission, “A Union of Equality: The Anti-Racist Action Plan 2020-2025,” The European Commission, 2020: 5-6.

⁶⁹ The European Commission, “The Commission proposes to extend the list of ‘EU crimes’ to hate speech and hate crime,” December 9, 2021, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6561 (accessed May 11, 2022).

⁷⁰ EC, *Union*: 2.

⁷¹ See, *inter alia*, Piet Eeckhout, “The growing influence of European Union law,” *Fordham Int’l LJ* 33 (2009).

recommendations like the one it issued to Finland in 2019, requiring provide greater legal protections by criminalizing hate speech on racial grounds and groups that promote racism.⁷²

In terms of legal efforts affecting Finland, the EU has begun to enforce the Framework Decision on combating racism and xenophobia,⁷³ which dates to 2008 but has recently found use as the European Commission's way to establish legal protections against racism. The Framework Decision became relevant to Finland's domestic legislation recently as the Commission took the relatively rare action of opening an infringement proceeding against Finland for not transposing it; as the matter is ongoing, Finland risks being taken to the Court of Justice of the European Union (the CJEU) if it does not take appropriate action.⁷⁴ Through their cooperation, ECRI and the EU could therefore have more of a reputational effect on Finland than the UN. However, Finland so far has only commissioned an evaluative memorandum to assessing its penal code's adequacy for addressing hate crime legislation, finding that its existing legislation is sufficient for addressing what it terms "organized racial harassment."⁷⁵

Furthermore, ECRI's human rights standards could become mainstreamed internationally through the EU's influence in a way that would benefit racialized people globally. The EU's assistance is needed since, as Finland notes in the memorandum, hate crime lacks an agreed upon definition;⁷⁶ the lack of a definition has hindered hate crime being considered a human rights violation. In terms of progressively providing protections, the EU's actions nevertheless shows that hate crimes can be legislated against even if an exact definition has proven elusive. ECRI and the EU furthermore illustrate how legal standards can be created in real time in response to a genuine problem as hate crimes in Europe as racialized people in Finland experience racist violence at the highest rates in Europe.⁷⁷

⁷² ECRI, "ECRI report on Finland (fifth monitoring cycle)," September 10, 2019, <http://rm.coe.int/fifth-report-on-finland/1680972fa7> (accessed May 17, 2022): 39.

⁷³ Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (2008/913/JHA), 28 November 2008.

⁷⁴ The European Commission, "Infringement procedure," The European Commission, https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en (accessed June 2, 2022).

⁷⁵ Kanerva, "Arviomuistio": 33.

⁷⁶ Ibid: 5.

⁷⁷ FRA, "Being Black": 14.

I conclude by noting that defining hate crime also as a human rights violation would allow for demanding accountability from Finland as a profoundly racist state. Since considering hate crime a human right violation is complicated by it being perpetrated by individuals rather than states, to place blame on the state, Barbara Perry suggests that a state should be considered culpable for perpetuating hate crimes if they are “symptomatic of societally endemic antipathies toward their victims,” the authorities share the racial animus and therefore endanger the appropriate legal remedies’ availability.⁷⁸ By this definition, not properly addressing racist hate crime amounts to a human rights violation, which obligate Finland to take action against violent racism. Concrete action is especially important for racialized people who are subjected to hate crime at outsized rates: over 75 percent of hate crime complaints in Finland relate to ethnicity or national origin.⁷⁹ Transposing effective hate crime legislation would make Finland’s racism undeniably visible. This would undermine the color-blind notion that race has little relevance for one’s lived experience and racialized people do not need additional legal protections in Finland.

4. DOMESTIC LEGAL FRAMEWORK

As the international monitoring bodies’ attempts to influence it show, domestic legislation is crucial for legally addressing racism.⁸⁰ Following the CRT approach that uses the master’s tools to dismantle the master’s house to advance racialized people’s rights,⁸¹ I am especially concerned with the legal remedies’ availability and immediacy because of racism’s widespread nature in Finland. The Finnish legal framework’s legal protections against racism are divided between criminal and anti-discrimination law. I focus on problems in implementation with both due to this project’s practical focus.

⁷⁸ Thomas Brudholm, “Hate crimes and human rights violations,” *Journal of applied philosophy* 32, no. 1 (2015): 95.

⁷⁹ Jenita Rauta, “Poliisin tietoon tullut viharikollisuus 2020” [“Hate crime cases brought to the police in 2020”], *Poliisiammatikorkeakoulun katsauksia* 19/2021 (Poliisiammattikorkeakoulu: 2021): 10.

⁸⁰ See, *inter alia*, Beth A. Simmons, *Mobilizing for human rights: international law in domestic politics* (Cambridge University Press: 2009).

⁸¹ Paul Butler, “Racially based jury nullification: Black power in the criminal justice system,” *Yale LJ* 105 (1995): 680.

4.1 Criminal legislation: The Criminal Code of Finland

In contrast to ECRI's requirements, Finland mostly criminalizes racism as an aggravating factor in connection to another crime such as assault.⁸² This generally requires finding the crime to have been perpetuated in a mental state of racial animus; this section focuses on the Finnish police's failures to do so.

The current problems with implementing Finnish criminal legislation can be used to identify problems that would likely also plague hate crime legislation. In the criminal context, the police as the color-blind gatekeepers of the criminal justice system emerge as the main problem in providing legal protections. I follow Möschel who notes generally the European resistance to judicially establish a racist motive due to the discrepancy between the victim's experience and the criminal justice system's definition.⁸³ I consider two Finnish studies aligning with the CRT approach of increasingly examining the police as the gatekeepers of the criminal justice system.⁸⁴ Notably, in Finland, against international standards, racism is frequently not attached to crimes as an aggravating factor despite racist elements that would warrant it. Laura Peutere and Juha Kääriäinen's study from 2006 shows that the police rarely considers a violent offense to have been motivated by racism despite the racist dynamics at play.⁸⁵ While the researchers attribute this to, *inter alia*, police incompetence,⁸⁶ Möschel, working from the CRT perspective, identifies this as a problem of non-recognition of racism.⁸⁷ Taking this further, I argue that since the study's findings have been confirmed repeatedly, the non-recognition of race amounts to color-blindness. This prevents racist crimes from proceeding to the prosecutor, making it impossible to ensure legal protections for the 14 percent of people of African

⁸² The Criminal Code of Finland, Chapter 6, Article 5. Racism can also be brought up in connection to incitement to violence, which criminalized under Chapter 10, Article 11 and essentially amounts to hate speech.

⁸³ Möschel, *Law*: 134.

⁸⁴ For a recent example, see, *inter alia*, Jasmine B. Gonzales Rose, "Toward a critical race theory of evidence." *Minn. L. Rev.* 101 (2016).

⁸⁵ Peutere, Laura, and Juha Kääriäinen, "Racist crimes in the Finnish criminal justice system—analysis of cases reported to the police in Helsinki in 2006," *European Journal of Crime, Criminal Law and Criminal Justice* 18, no. 3 (2010): 278.

⁸⁶ *Ibid.*

⁸⁷ Möschel, *Law*: 134.

descent who are victims of racist violence.⁸⁸ Similarly, a Finnish study from 2017 found that racism was applied as an aggravating factor only in 40 percent of cases in which it would have been justified either at the investigative or prosecutorial stages.⁸⁹

Terhi Jyrkkö-Shamsi's elaborating study shows that the misidentification stems from a lack of attention to the context, which CRT considers central for revealing racist dynamics at play to avoid formalism⁹⁰ in discerning intent. In examining assault cases from 2008 to 2018, Jyrkkö-Shamsi found that ignoring race led to the police to blame the white perpetrator and the racialized victim equally in assault cases.⁹¹ This is the case even when there were clear indicators of racism, such as racially derogatory name calling or the perpetrator admitting to racist views, presumably fulfilling the *mens rea* standard of establishing a racist motivation. Indeed, anything short of this seems to not rise to a level that would induce the courts to address it and provide a legal remedy. In one case the courts viewed as ambiguous, no aggravating factor was found because it considered racist name calling to be too vague an indicator of sufficient racial animus, even when a white defendant followed yelling racially derogatory terms at an interracial couple by attacking the man with a baton.⁹² As the racialized man had responded in kind to the name calling, the victim's efforts to defend himself seem to have nullified his status as a victim of a racially-motivated attack. Drawing from CRT scholarship shows that, in contrast to racialized people's treatment, white people are accorded "permanent victim status" and their violence against racialized people is sanctioned.⁹³ As assigning blame is essential for criminal proceedings, misinterpreted racial dynamics means that white people are not held accountable for committing even violent acts of racism while racialized people are at fault despite not committing a crime. In practice, this entrenched view means that racialized people are prevented

⁸⁸ FRA, "Being Black": 10.

⁸⁹ Marko Juutinen, "Viharikokset ja niiden käsittely rikosprosessissa" ["Hate crimes in criminal proceedings"] (The Finnish Ministry of Justice: 2021): 23.

⁹⁰ Möschel, *Law*: 106.

⁹¹ Terhi Jyrkkö-Shamsi, "Viharikokset tuomioistuimissa—ns. vihamotiivi koventamisperusteena hovioikeuksien käytännössä" ["Hate crimes in the courts—so-called hate crimes as an aggravating factor in appellate courts"], *Valittuja kysymyksiä rikos- ja rikosprosessioikeudesta*, Helsingin hovioikeus, 2019: 55.

⁹² Ibid: 64.

⁹³ Lisa Marie Cacho, "The presumption of white innocence," *American Quarterly* 66, no. 4 (2014): 1085.

from accessing legal protections. Indeed, in my reading of Jyrkkiö-Shamsi's case summaries, it would have been warranted to consider the racialized person a victim in every case.

Furthermore, as state agents, the police's actions express both broader societal Finland's belief in white innocence and their personal unconscious racism as meant by Charles R. Lawrence. Lawrence directs us to examine conduct's cultural meaning to clarify the underlying racial dynamics, requiring a kind of contextual reading to counter one's biases.⁹⁴ Not engaging in a more nuanced interpretation makes it fundamentally impossible to hold individual white Finns accountable even for severe violence. The police's failure to accurately label a crime means that victims are not able to benefit from legal protections even if they are encoded in penal statutes. Yet, as Finland has successfully detached itself from racism, it difficult to transport contextual readings into police practices or even show a need for it as 91 Finns continue to trust the police.⁹⁵

Criminal proceedings therefore illustrate that societal white innocence and personal unconscious racism in the law's implementation has practical consequences. The studies' time span indicates not intervening appropriately has become entrenched as a police practice, making legal protections' implementation unlikely. This amounts to severe legal disenfranchisement in the country ranked the best in the world for fundamental rights and criminal justice⁹⁶ since racist violence in Finland continues to take place at the highest rates in Europe.⁹⁷ Minorities' lower trust in public authorities when compared to white native Finns therefore can be seen as identifying a genuine problem with the Finnish law enforcement.⁹⁸

4.2 Anti-Discrimination Legislation: The Non-Discrimination Act

⁹⁴ Charles R. Lawrence, "The id, the ego, and equal protection: Reckoning with unconscious racism," *Stan. L. Rev.* 39 (1987): 327-328.

⁹⁵ The Finnish Government, "Poliisibarometri 2020: Kansalaisten arviot poliisin toiminnasta ja Suomen sisäisen turvallisuuden tilasta" ["The police in 2020: Citizen assessments about police action and Finland's domestic security situation"], The Finnish Ministry of the Interior, 2020: 5.

⁹⁶ World Justice Project, "World Justice Index 2019" (World Justice Project, 2020), https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf (accessed June 2, 2022): 25, 29.

⁹⁷ FRA, "Being Black": 14.

⁹⁸ OECD, "Drivers of Trust in Public Institutions in Finland" (OECD Publishing: 2021), <https://doi.org/10.1787/52600c9e-en> (accessed May 11, 2022): 20.

While criminal law focuses on the egregious and blatant manifestations of racism, anti-discrimination law addresses racism's everyday expressions. To that end, Finland's Non-Discrimination Act has implemented the Racial Equality Directive (the RED)⁹⁹ and the Employment Equality Directive (the EED)¹⁰⁰ since 2004. Broad legal protections offered by the RED's wide scope against discrimination are necessary as 67 percent of persons of African descent in Finland experience racial discrimination in education and 60 percent in employment.¹⁰¹ However, only less than half of the respondents would report a discriminatory incident to any authority; the most commonly cited reason is a lack of belief in a complaint resulting in meaningful action.¹⁰² Racialized people therefore seem to have only inadequate legal protections available to them against quotidian forms of racism. Moving beyond the usual criticism of the EU anti-discrimination legal framework,¹⁰³ I therefore consider the Act's implementation in practice with particular attention to legal protections through the Non-Discrimination Ombudsman's efforts. This section's focus derives from my capstone project's practical component, which consisted of a public consultation statement to the Ministry of Justice on the Non-Discrimination Act's revisions in the spring of 2022. I especially focus on the expansion of the Non-Discrimination Ombudsman's mandate to include racial discrimination in employment as it illustrates to larger issues with the Ombudsman's work regarding racialized people, manifest especially in the lack of resources. While this change therefore appears to represent a positive development for Finnish anti-discrimination law, I consider it to also represent a significant

⁹⁹ Council Directive 2000/43/EC ("Racial Equality Directive"), 29 June 2000.

¹⁰⁰ Council Directive 2000/78/EC ("Equal Employment Directive"), 27 November 2000.

¹⁰¹ The Non-Discrimination Ombudsman, "Selvitys afrikkalaistaustaisten henkilöiden kokemasta syrjinnästä" ["A report about the discrimination faced by persons of African descent"], updated in November 2020, <https://syrjinta.fi/documents/25249352/0/Selvitys+afrikkalaistaustaisten+henkiloiden+kokemasta+syrjinnasta+%28PDF%2C+2204+kt%29.pdf/26f9e7b9-1dca-a3b6-4022-467340922da0/Selvitys+afrikkalaistaustaisten+henkiloiden+kokemasta+syrjinnasta+%28PDF%2C+2204+kt%29> (accessed May 20, 2022).

¹⁰² The Non-Discrimination Ombudsman, "Yhdenvertaisuusvaltuutetun kertomus eduskunnalle 2022" ["The Non-Discrimination Ombudsman's report to the Parliament, 2022"], 2022, <https://www.eduskunta.fi/valtiopaivaasiakirjat/K+7/2022> (accessed June 12, 2022): 15.

¹⁰³ See, *inter alia*, Mathias Möschel, "Eighteen Years of Racial Equality Directive: A Mitigated Balance," in *EU anti-discrimination law beyond gender*, edited by Uladzislau Belavusau and Kristin Henrard (Oxford University Press: 2019).

challenge to protect individual rights. My focus on individual rights aligns with the CRT approach that centers on protecting individual rights in practice because due to the necessity of doing so.¹⁰⁴

The RED's requirement to have an equality body to hear complaints, publish reports and issue recommendations¹⁰⁵ has been one of its most commended features.¹⁰⁶ Finland consequently instituted the Non-Discrimination Ombudsman as an equality body attending to discrimination faced by racialized people (known as the Minority Ombudsman until 2015). The Ombudsman's mandate is broad as it covers discrimination on all grounds except for gender and sexual orientation; the office has also assumed reporting duties to CEDAW and monitors the execution of asylum seekers' deportations.¹⁰⁷ While some recommend empowering a national ombudsman to the extent possible¹⁰⁸ since the ombudsman is essentially responsible for implementing anti-discrimination law in practice,¹⁰⁹ the lack of resources sets limitations to successfully such a broad set of responsibilities to racialized people's disadvantage.

The Non-Discrimination Ombudsman suffers from a problem perhaps inadequately explored in considering what determines an ombudsman's success: a lack of funding that, in the Finnish context, means she can only respond to complaints, but cannot represent individuals in judicial proceedings.¹¹⁰ This would be especially relevant in individual cases of racial discrimination, which otherwise risk being forgotten since the courts do not present a viable option for many due to litigation costs and the risk of incurring the defendant's legal fees. Indeed, when it comes to racial discrimination, the Ombudsman seems able to only fulfill her duties only partly despite discrimination

¹⁰⁴ Kimberlé Williams Crenshaw, "Race, reform, and retrenchment: Transformation and legitimation in antidiscrimination law," in *Law and Social Movements* (Routledge: 2017): 475-531.

¹⁰⁵ RED, Article 13(2).

¹⁰⁶ Mark Bell, "EU Anti-discrimination law: Navigating sameness and difference," in *The Evolution of EU law*, edited by Paul Craig and Gráinne de Búrca (Oxford University Press: 2021): 654.

¹⁰⁷ The Non-Discrimination Ombudsman, "Toimijat ja heidän roolinsa yhdenvertaisuuden edistämässä" ["Stakeholders and their roles in advancing equality"], Yhdenvertaisuus.fi, <https://yhdenvertaisuus.fi/toimijat> (accessed June 11, 2022).

¹⁰⁸ Linda C. Reif, "The Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman," *Boston Coll. Third World Law J.* 31, no. 2 (Spring 2011): 301.

¹⁰⁹ Barbara Havelková and Mathias Möschel, "Anti-discrimination law's fit into civil jurisdictions and the factors influencing it," in *Anti-discrimination law in civil law jurisdictions*, edited by Barbara Havelková and Mathias Möschel (Oxford University Press: 2019): 13.

¹¹⁰ The Non-Discrimination Ombudsman, "Yhdenvertaisuusvaltuutetun raportti": 104. The Non-Discrimination Ombudsman notes this as a limitation in her 2022 report to the Parliament.

on the basis of national origin or ethnicity being second most common ground for complaints.¹¹¹ Underfunding the Ombudsman risks not enforcing Finland's commitments to anti-discrimination law, which risks casting the Ombudsman in a supporting role to mostly prop up appearance rather than enforcing concrete legal protections.

In light of the ombudsman's already extensive duties and constrained resources, the seemingly welcome revision of expanding the ombudsman's mandate to cover racial discrimination in employment seems less transformative. Racialized people are unlikely to be able to pursue remedies through the Ombudsman if she is too overwhelmed as the number of complaints already increased by 73 percent between 2014 and 2015 when the Ombudsman's mandate was expanded.¹¹² Indeed, assigning discrimination in employment to the Ombudsman can prevent mainstreaming racism as an issue across different public authorities' work. Currently, regional and national occupational health and safety authorities are responsible for addressing racial discrimination in employment, although they retain the option to request the Ombudsman's advisory opinion.¹¹³ However, the Ombudsman has expressed her desire to take on the authorities' racial discrimination-related duties due to her expertise regarding racial discrimination.¹¹⁴ Yet the increased workload can also prevent her from fulfilling other racism-related tasks, which, in terms of remedies, consists of responding to large-scale issues perpetuated by private actors such as companies.¹¹⁵ By responding mostly to systemic issues, the Ombudsman counters one of the biggest criticism about the RED: its excessive focus on individual right due to a narrow understanding of racism.¹¹⁶ Yet containing anti-discriminatory measures to the Ombudsman does not ensure greater legal protections for individuals subject to racialized discrimination broadly in society. This would be better accomplished by demanding a

¹¹¹ Non-Discrimination Ombudsman, "Yhdevertaisuusvaltuutetun raportti": 14.

¹¹² Kati Nieminen et al., "Aidosti yhdenvertaiset: Yhdenvertaisuuslain arviointi" ["Genuinely equal: An assessment of the Non-Discrimination Act"], *Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja* 2020:50, Valtioneuvoston kanslia, 2020: 47.

¹¹³ Ibid: 45.

¹¹⁴ The Non-Discrimination Ombudsman, "Yhdevertaisuusvaltuutetun raportti": 104.

¹¹⁵ Ibid: 50.

¹¹⁶ Mark Bell, "Racism and Anti-Discrimination Policy," in *Racism and equality in the European Union* (Oxford University Press: 2008): 71.

greater awareness of racism from public authorities who already are obligated to advance equality under the Non-Discrimination Act.¹¹⁷

However, another revision that extends Finnish anti-discrimination law beyond the RED's standards¹¹⁸ could allow for implementing anti-discrimination law in a more broad-based and legally binding way. So far, the court's inaccessibility and the scarcity of case law has not allowed anti-discrimination law to develop in the national jurisprudence, which has meant that judicial guidance has not developed in cases relating to individual rights specifically. The revisions suggest empowering the Ombudsman to bring cases to the recently established Equality and Non-Discrimination Tribunal without an identifiable litigant, and the opportunity is also being extend to civil society organizations; both could use the equality body to creatively influence European anti-discrimination law. Bringing cases to the Tribunal would be especially significant because it is authorized to issue advisory opinions to the courts and is likely to be requested to do so due to lacking case law. A Tribunal-directed case brought to a Finnish court could be referred to the CJEU through a preliminary referral. If the CJEU ruled in favor of a progressive interpretation, the Tribunal opinion could therefore contribute to a CJEU anti-discrimination decision binding on all Member States. Empowering the Ombudsman and civil society actors in Finland could therefore bring positive developments also at the European level. Indeed, civil society organizations' legal activism was how foundational racism cases like *Firma Feryn*¹¹⁹ were brought to the CJEU.¹²⁰ These revisions to the national equality bodies could therefore have an EU-wide effect on protecting individual rights.

5. CONCLUSION

¹¹⁷ The Non-Discrimination Act (1325/2014), Chapter 2, Section 5.

¹¹⁸ Bell, "Racism": 69.

¹¹⁹ Case C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, CLI:EU:C:2008:397.

¹²⁰ Stamatina Yannakouru and Dimitris Goulas, "Enforcing anti-discrimination law in Greece: Courts' resistance and deficiencies of civil litigation in employment discrimination," in *Anti-discrimination law in civil law jurisdictions*, edited by Barbara Havelková and Mathias Möschel (Oxford University Press: 2019): 13.

I take it as encouraging that some CRT concepts do not apply to Finland. For example, Sumi Cho's post-racialism emerged in the United States the wake of the seemingly racially redemptive event of Barack Obama's election to create a narrative of unearned progress regarding race relations.¹²¹ However, Finland has been sent on the opposite course as racism was newly established as a problem through the Black Lives Matters protests that took place in Finland in June 2020. While the anti-racist action plan it elicited is incomplete (as discussed above) and does not call for further legislative changes to ensure legal protections, it represents a commitment to recognizing racism, which marks a stark difference with Finland's usual color-blindness.

However, in considering human rights, Derrick A. Bell Jr.'s concept of interest convergence could provide further encouragement to Finland from the international perspective. Bell considers minorities to have made gains with civil rights because racism became a foreign policy problem for the United States.¹²² Should racism become enough of a image problem for Finland on the international stage, it could also act to similarly secure legal protections for racialized people—hopefully with a real impact sooner rather than later.

¹²¹ Sumi Cho, "Post-racialism," *Iowa L. Rev.* 94 (2008): 1596-1598.

¹²² Derrick A. Bell Jr, "Brown v. Board of Education and the interest-convergence dilemma," *Harvard L. Rev.* 93 (1980): 518-533.

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