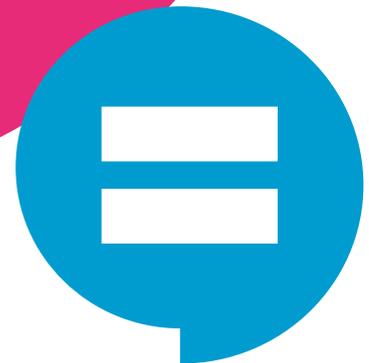




**TWO YEARS WITH THE NEW  
NON-DISCRIMINATION ACT**



**ANNUAL REPORT** OF THE NON-  
DISCRIMINATION OMBUDSMAN 2016

# CONTENTS

<b>Non-Discrimination Ombudsman</b> .....	3
<b>Foreword</b> .....	4
<b>“As a disabled person, I am a second class citizen” - the equal participation and status of people with disabilities in Finland</b> .....	6
<b>The Non-Discrimination Ombudsman’s 2016 customer-work in numbers</b> .....	12
<b>Promoting equality through co-operation with stakeholders and influencing society</b> .....	16
Co-operation with the police .....	18
Effort to prevent racism that targets asylum seekers and members of minority religions.....	18
Hate speech and hate crimes .....	19
Hate speech and anonymous recruitment themes during visit by Germany’s Non-Discrimination Ombudsman .....	20
Supporting basic and human rights of the Sámi .....	20
International cooperation.....	22
<b>Creating a practice for interpreting the Non-Discrimination Act</b> .....	24
Key observations in statements given in court .....	24
A statement to the National Non-Discrimination and Equality Tribunal of Finland .....	26
<b>Equality must be considered in legislative preparation.</b> .....	28
Amendments to legislation concerning foreign nationals.....	28
Amendments to marriage legislation .....	29
<b>Promotion of equality a legal obligation for authorities and private actors</b> .....	30
Workshop to help workplaces in planning .....	30
Equality planning a new process for enterprises .....	31
Tips for Equality planning.....	34
How to draw up a good equality plan for a school.....	34
How to draw up a good equality plan for a municipality.....	36
<b>Human trafficking</b> .....	38
Return of victims of human trafficking to Italy to be considered more closely and on an individual-basis in the future.....	38
Number of Nigerian victims of human trafficking is growing .....	38
Only just over one-fourth of human trafficking victims are granted residence permits in Finland.....	39
Deportation of victims of human trafficking to Italy exposes them to a risk of continued exploitation .....	40
Information acquisition trip demonstrated shortcomings in information flow and access to assistance .....	41
<b>Monitoring of removal from a country Forced removal from countries to increase - need for monitoring to grow</b> ...	44
Monitoring of the implementation of removal to become stronger in Europe.....	44
Thousands of deportations - only some are monitored ....	45



## Foreword:

The second year as the Non-Discrimination Ombudsman has sped by. Utilising the new powers in practical work, office teams, screening of customer cases and tight cooperation with stakeholders have created a strong foundation we have built our work on during 2016. Our particular focus areas included promoting the rights of disabled persons, training and communication on equality plans, particularly in the education sector and in working life, strengthening cooperation with the occupational safety and health authorities as well as developing the reporting and practices with regard to controlling expulsions. In addition to these, we have raised a few key topics in this annual report that stem from the new legislation.

The number of contacts with the Ombudsman have nearly doubled since the previous year. When the number of human resources has remained the same, we have to prioritise tackling of discrimination more clearly and limit processing to cases that may more extensively benefit victims of discrimination or persons at risk. Our customer contacts and our report on the rights of disabled persons indicate that awareness of the Ombudsman's ability to address discrimination is still rather weak. This calls for active visibility on our part, and we have to explain the concept of discrimination in an understandable way in order to avoid creating false expectations in situations that are not discriminating.

Through the Non-discrimination Act, also disabled persons have an Ombudsman to which they can make a complaint on discrimination against themselves. Disabled persons experience a lot of discrimination, and we have put much effort in investigating and address-

ing the situation of discrimination against disabled persons and in pointing out their rights. Finland finally ratified UN's Convention on the Rights of Persons with Disabilities (CRPD) in 2016. The Convention supports the objectives of the Non-discrimination Act, strengthens the rights of disabled persons and sets new requirements whose fulfilment we aim to monitor in our own work. The Convention makes another authority available to disabled persons, the Centre for Human Rights, which focuses on monitoring the implementation of the Convention. I believe that close cooperation with other actors is the best way to promote the actual equality of persons with disabilities.

A two-year old authority with broad competence and a new name has to work hard to raise awareness of itself and the non-discrimination legislation. During 2016, we have invested in effectiveness through stakeholders. When people contact us, they often tell a similar story. By discussing the problematic issues with a discriminating authority or service provider we can get good results. Good examples of this include cooperation with actors in the insurance field and parties responsible for public traffic to prevent ageism and to increase accessibility.

A significant change in the new Act was expanding the requirement for planning the necessary measures for the promotion of equality. During 2016, authorities, educational institutions and larger companies have hustled to fulfil this requirement by the end of the year when the transition period ends. This report explains how the Non-Discrimination Ombudsman supported a few companies in the planning process and gives tips for planning in case the equality plan of the company still needs updating.



# “As a disabled person, I am a second class citizen”

## – THE EQUAL PARTICIPATION AND STATUS OF PEOPLE WITH DISABILITIES IN FINLAND

“I hope that during my lifetime the disabled could live as equals with so-called normal people. There is still a long way to go before this happens.” These are the thoughts of one of the disabled people we interviewed. In 2016, disability was the second most common reason for discrimination listed in notifications of discrimination submitted to the Non-Discrimination Ombudsman (21% of all notifications of discrimination, n = 891). Based on the received complaints and an enquiry carried out in 2016, it can be said that there is still quite some way to go before disabled people are able to participate equally and have equal status in Finnish society. The Non-Discrimination Act and the UN Convention on the Rights of Persons with Disabilities, which Finland finally ratified in 2016, support progress towards this change.

Promoting the rights of people with disabilities was one of the main areas of activities for the Non-Discrimination Ombudsman in 2016. Related to this goal, the Ombudsman and a supporting working group carried out an enquiry into discrimination experienced by disabled people, which examined the types of daily situations and the extent to which people with disabilities encountered unfair and discriminatory treatment in Finland. There could have also been numerous other areas of life to view the issue from as e.g. social and health care services was an area the Ombudsman received a great deal of complaints in from people with disabilities. However, the enquiry focused on discrimination experienced by people with disabilities in the provision of goods and services, in working life and in accessibility to e-services, as these issues have become particular and current challenges in the Non-Discrimination Ombudsman’s work. In addition to experiences of discrimination, the enquiry assessed the degree to which people with disabilities utilise exist-

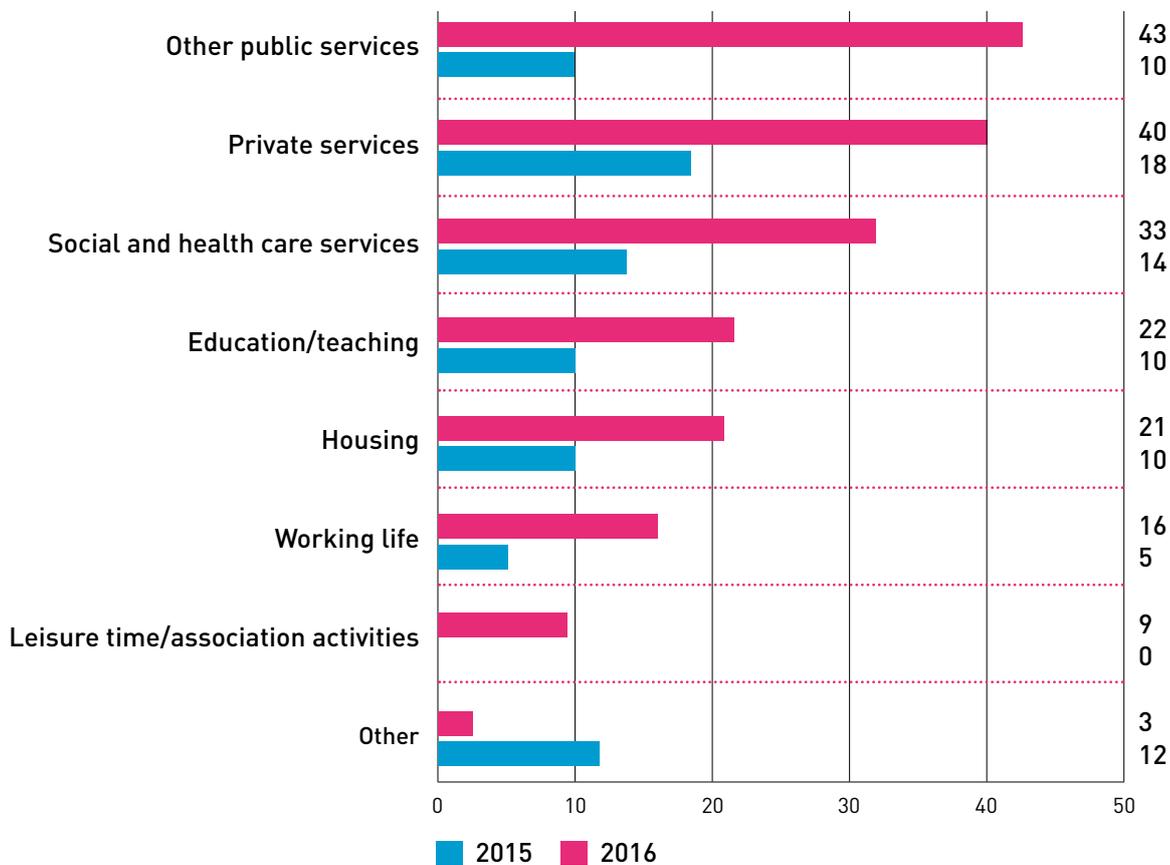
ing bodies that provide legal protection. On the basis of the results, it is apparent that people with disabilities have a large number of experiences in discrimination in the areas of life selected for the enquiry, but they do not actively utilise the legal protection approaches available to them.

According to the enquiry, low threshold means of legal protection, such as the Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal of Finland are not well known among people with disabilities. Many of the respondents answered that they thought they knew what discrimination meant, but a significantly smaller number felt they understood their rights if they experienced discrimination or harassment. There is a particular need to increase the knowledge people with disabilities have on existing bodies that provide legal protection. The focus of measures must be on actively increasing the legal knowledge and understanding people have. During the past year, the Ombudsman’s office has met with disability organisations and participated in numerous events on the rights of people with disabilities, in order to increase awareness. We have also influenced the development practices used by authorities and private goods and service providers that will better take people with disabilities into account.

The enquiry will help us set objectives and target activities more effectively so that they promote the equality of people with disabilities. In order to ensure that the results of the enquiry are implemented in practice, the promotion of disabled people’s rights will remain one of our areas of focus also in 2017. The purpose has been to further strengthen co-operation with disability organisations as well as to share and receive more information on the rights of people with disabilities via the subcommit-

“My view is that working, at least for people of working-age, is a central way in which to be part of something bigger and form one’s own identity.”

**DISCRIMINATION BASED ON DISABILITY IN DIFFERENT AREAS OF LIFE**

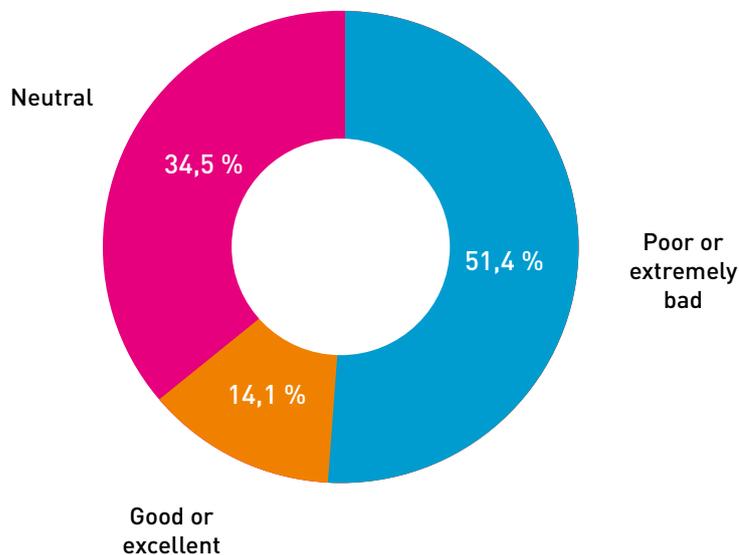


tee on disabilities that has been established in connection with the Non-Discrimination Advisory Council. Improving people's awareness of their rights is one of the basic pillars of intervening in discrimination.

Why is the participation by disabled people in society and the realisation of non-discrimination so difficult? When examining the results of the enquiry from a distance in order to find a reason for the responses, the present attitude environment is a strong contender. The enquiry confirmed that there is a prevailing attitude problem, as we have observed previously in our work. It can be said that officially speaking the rights of disabled people in Finland are good, but the problem lies in the realisation of rights in everyday life.

Unfortunately, there are still many actors in our society who need more education to understand that people with disabilities have the right to attend school, go to work and use public services just like everyone else. Full and equal participation by people with disabilities in Finnish society will not develop or come to be without a significant shift in attitudes. In some cases, people knowingly and intentionally have negative attitudes while in the case of others it is a matter of a lack of information and understanding. In the case of the latter, change will begin with the dissemination of knowledge, guidance and education. In the case of the first mentioned group, change will require active use of means of legal protection as well as dissuasive, effective and preventative consequences for the violation of rights.

### THE VIEWS OF RESPONDENTS ON THE GENERAL ATTITUDES OF PEOPLE TOWARDS THE DISABLED IN FINLAND (%) (N = 426)





“My view is that working, at least for people of working-age, is a central way in which to be part of something bigger and form one’s own identity.”

“In our country there is a similar understanding of disabled people as people who need to be coddled and helped as there was during WWII. The system encourages people with disabilities to not work, and if they do, to do so in disability organisations.”

In light of our enquiry’s results, it is apparent that there is still much to do in Finland when it comes to improving the status of people with disabilities on the labour market. By far the majority of respondents said that they were pensioners. The share of pensioners grows of course with age, but the share was significant in all age groups. The results of the enquiry demonstrate that the respondents’ participation in working life is significantly lower than that of the general public, although there are no significant differences in their level of education. A causal connection could not be drawn between the phenomena, but the current state of affairs raises an important question on the willingness and readiness of employers to hire disabled people. The views of the respondents on the impact of disability on recruitment was clear, disability places the job applicant in a weaker position in relation to other applicants even when both applicants have equal skills and competence. The Non-Discrimination Ombudsman encourages authorities and employers to find new models and means to integrate people with disabilities into working life. The possibility of employment strengthens each person’s confidence, independence and quality of life.

The experienced of people with disabilities in accessibility to e-services have not been researched previously, although the theme have been discussed and debated for a longer period of time. E-services have been prevalent in the complaints received by the Non-Discrimination Om-

budsman. These complaints concern the requirement for services that provide strong electronic identification. As a rule, the problem has been that the disabled customer, who has submitted the complaint, does not have or has not been granted internet bank identifier codes. The use of e-services is not a given for people with disabilities. The enquiry found that people with disabilities have problems related to their disability which make it difficult for them to acquire the information, purchase goods and services and manage their affairs online. The observation applies equally to information online, the purchase of goods and services and the management of affairs. Working in a digital environment is also essential in many workplaces and jobs.

Typical problems related to the use of online services involve the service not being accessible with the user’s aids and adjusted screen and not meeting with the needs of people with disabilities. This demonstrates that e-services are designed and realised without the needs of people with disabilities being taken into account, let alone having examined their user experience. Due to the manner of implementation, e-services place cause inequality for people with disabilities far too often. Additionally, the transition to e-services can create problems also in services where they have not been offered previously.

Digital services are an area that is being invested in both in the private sector as well as government administration. E-services also provide new possibilities and make everyday life easier for people with disabilities. The EU’s Directive on the accessibility of the websites and mobile applications of public sector bodies (2016/2102) will force us to give more thought in the future on the ways in which we implement matters in the public sector. It is essential in this process that people with disabilities are given the opportunity to participate in the design and implementation of e-services.



"We do not speak of disabled people, who have brains and can succeed in any type of IT or sales work. It is the media's and perhaps society's problem in general that disabled people are viewed in too narrow a context as people with certain types of disabilities."

# THE NON-DISCRIMINATION OMBUDSMAN'S 2016 CUSTOMER-WORK IN NUMBERS

Statistics over a period of two years demonstrate that contacts did not increase only in the first year after the scope of the Ombudsman's authority expanded. The growing number of complaints demonstrates that the Non-Discrimination Ombudsman's recognition is continuing to increase. Still, it is clear that certain groups that are particularly vulnerable are difficult to reach. This is evident in the results of the Non-Discrimination Ombudsman's enquiry into services for the disabled, according to which few people with disabilities knew of the Non-Discrimination Ombudsman. One of the Non-Discrimination Ombudsman's important areas of focus for 2017 are to increase the transparency of activities and lowering the threshold for contacting the Ombudsman.

In 2016, the Non-Discrimination Ombudsman's customer services processed 1,189 complaints of which the majority (891) concerned suspected cases of discrimination. In 2016, the Ombudsman's office processed 80% more complaints than the previous year.

The majority of discrimination suspicions involve authorities, but a private actors, such as service providers, are also the offending party in a growing number of instances. In 2016, a private party was the offender in 318 cases of suspected discrimination. A total of 223 complaints were submitted on municipalities and 126 on the State.

116 of the complaints submitted in 2016 concerned social and health care services. 91 complaints concerned housing, 84 education and 144 the workplace and working life. Complaints concerning housing often made it apparent how difficult it was for people who have been granted asylum to find a home, and origin was the most common reason for discrimination in matters related to housing.

The number of complaints related to discrimination encountered by people with disabilities doubled from 2015. The most common reason for discrimination was origin. The number of complaints related to origin has remained relatively the same over the last two years (203 in 2015 and 212 in 2016). Although it is known that sexual minorities are the target of a significant amount of discrimination in Finland, there were few related complaints. In 2016, there were 27 complaints. There are a multitude of reasons for this. Many do not yet know that the Ombudsman's scope of authority now includes sexual orientation. Distrust in authorities, becoming used to discrimination, the fear of further discrimination and the fear of revealing one's identity all discourage people from reporting discrimination. Young people do not generally contact the Ombudsman, but a child was the customer in 42 cases. These cases are usually related to education.

Asylum seekers and life in reception centres were evident in the year's complaints, and for this reason the number of complaints concerning discrimination on basis of nationality have increased.

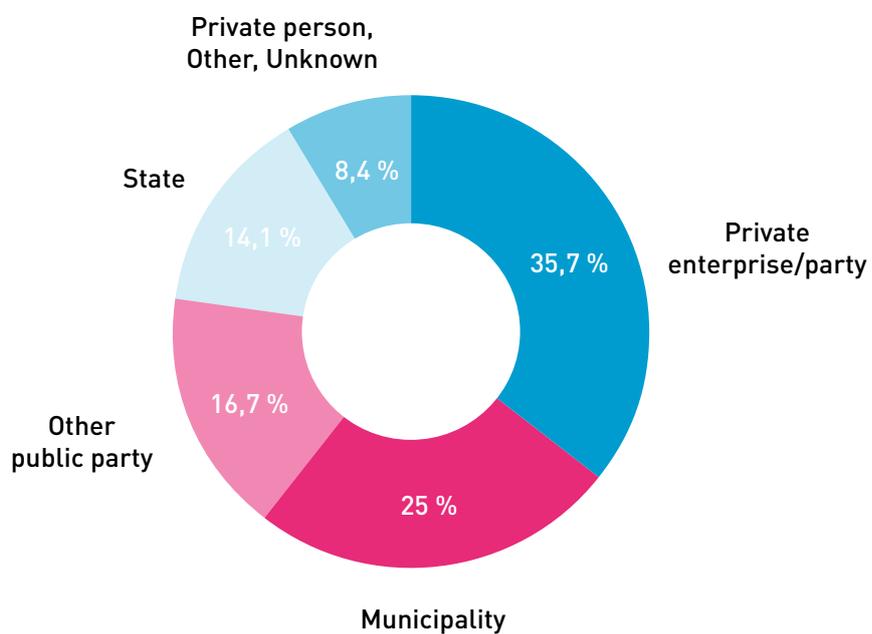


The Non-Discrimination Ombudsman's statistics are based on the communications log utilised in customer-work. Customers can contact the Ombudsman via the website, complaint form, telephone service (Monday -Friday 10-12), email or letter. Customer submitted complaints are handled by area of life.

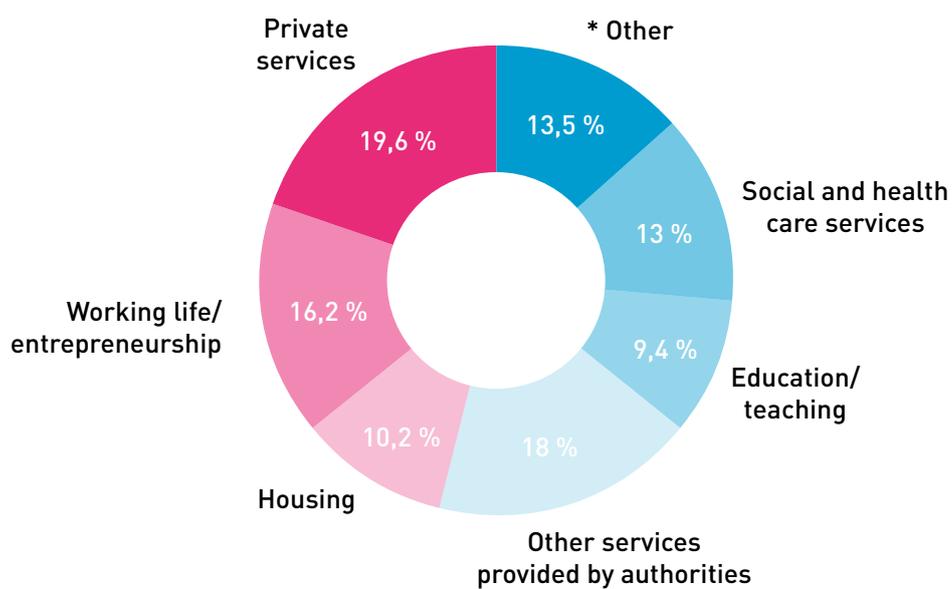
### CLASSIFICATION OF ISSUES



### OTHER PARTY IN DISCRIMINATION

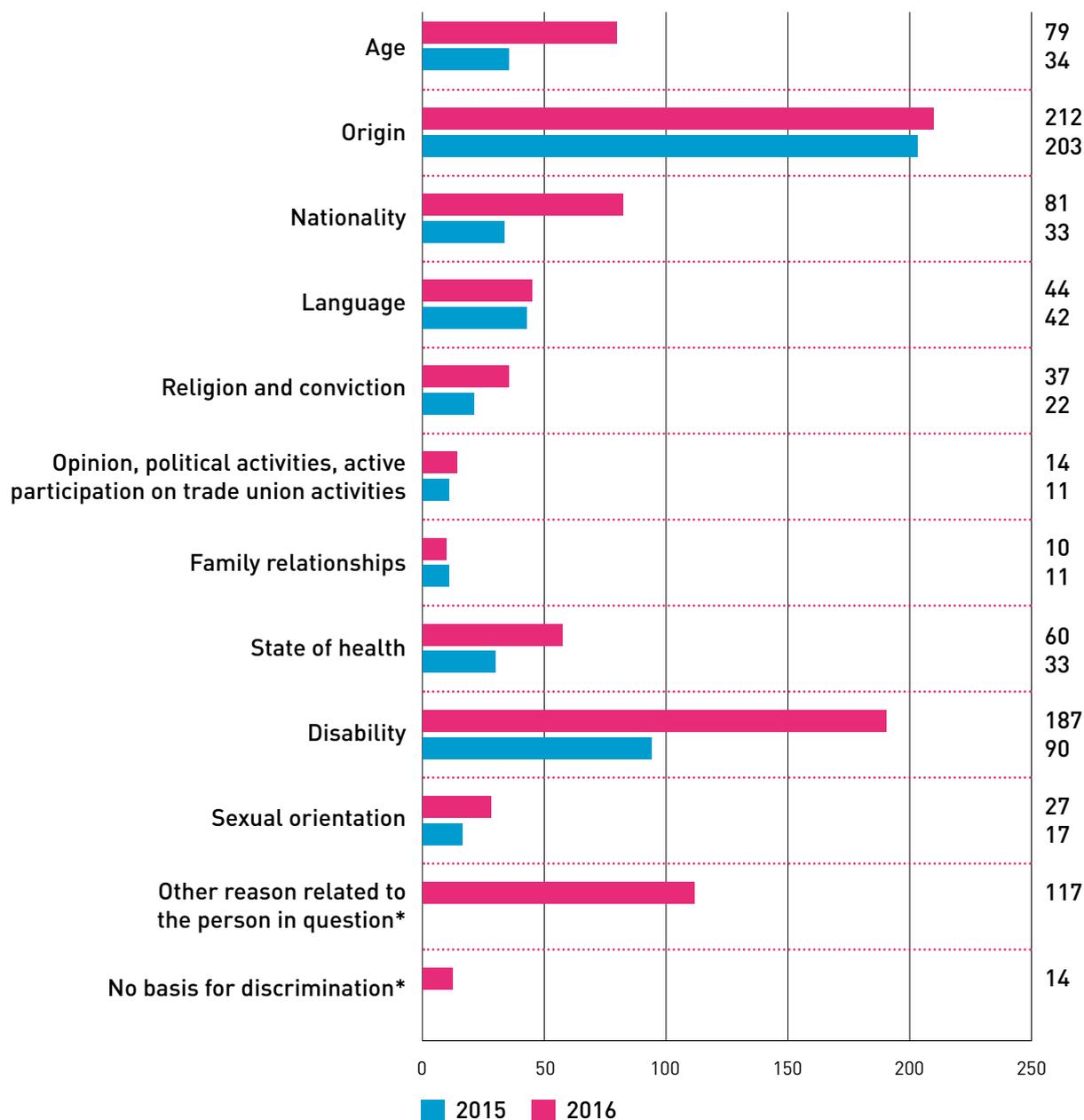


### DISCRIMINATION IN DIFFERENT AREAS OF LIFE



*\*Other, for example, Third sector, Participation in associations, Leisure time, Legislation, Media, Between private parties, No clear area of life, Unknown.*

## BASIS OF DISCRIMINATION IN THE PROCESSED NOTIFICATIONS OF DISCRIMINATION



*\*\*In 2015, statistics were not maintained on these. Another reason related to the person can refer for example to a prisons term, place of residence, professions, level of education or a bad credit record.*

# PROMOTING EQUALITY THROUGH CO-OPERATION WITH STAKEHOLDERS AND INFLUENCING SOCIETY

The Ombudsman's work to promote equality is quite the feat: last year the Ombudsman held thirty speeches at larger events, forty speeches at training events, took part in one hundred meetings, participated in fairs, organised seminars, wrote dozens of statements for the purpose of legislative preparation, and communicated on activities in different channels. Work with customers takes up a large part of experts' working time, but it is only part of the Non-Discrimination Ombudsman's work. Work to increase awareness, training, meetings with stakeholders and acting as an expert in legislative preparation found an entity that promotes equality step by step and bring about change for the better in legislation, structures as well as in the lives of private people.

In 2016, the Non-Discrimination Ombudsman as well as the office's other staff met with a range of authorities, NGOs, media as well as public and private sector actors. The Ombudsman maintained regular contact with ministers and members of parliament.

Organisations and parties that represent minorities include SETA, the Finnish Somali League, Finland's Muslim Network, disability associations such as the Hearing Association, Kynnys ry, the Finnish Federation of the Visually Impaired, and the Advisory Board for the Rights of Persons with Disabilities VANE, the Union of Freethinkers, Finnish Youth Cooperation – Allianssi and FARO ry. The Ombudsman receives valuable information from these organisations on what types of discrimination various groups encounter, and organisations are able to advise and when necessary instruct members who experience discrimination to contact the Ombudsman. Organisations invite staff from the Non-Discrimination Ombudsman's

Office to their events to talk about the Non-Discrimination Act and how it can be applied. Awareness of one's own rights is a basic condition for the legal protection of individuals in practice.

Taking out an insurance policy may seem like a self-evident means of additional protection, but for many members of minorities it is not that at all. For example, people with disabilities or those with long-term illnesses have to fight to be given insurance. The Non-Discrimination Ombudsman has also been notified that the origin or even place of residence of a person may influence whether they are given insurance or credit. Insurance companies, banks and creditors naturally have the right to and obligation to carry out risk analysis on their activities, but the Non-Discrimination Act also applies to them. Every insurance and credit applicant has the right to be assessed as an individual and not as part of a certain group. During the year, the Non-Discrimination Ombudsman held talks on the impact of the Non-Discrimination Act with the insurance and banking sector and with various actors in the financial sector.

Long-term co-operation with various religious groups continued. Dialogue was held with Muslim communities on things such as the right of religion and the importance of religion-based identity. How can the right to practice one's religion be realised, if society tries to limit the visibility of one's religious identity. Dialogue with non-religious communities and freethinkers was equally valuable. How is religion still related to the daily activities of schools or day-care centres? In 2016, representatives of the Non-Discrimination Ombudsman also met with the representatives of UUT ry, an organisation that offers support for the victims of religion.



ities, ratified in summer 2016. Work with transport entrepreneurs to promote equality will continue in 2017.

The Non-Discrimination Ombudsman works in close co-operation with Regional State Administrative authorities responsible for occupational safety with the aim of tackling discrimination in working life. Occupational safety authorities are responsible for investigating individual suspected cases of discrimination in the workplace, and the Non-Discrimination Ombudsman in turn is tasked with promoting equality in the workplace. It is important that occupational safety authorities and the Non-Discrimination Ombudsman hold discourse on the basis of their own cases and discrimination assessments in order to find as uniform an interpretation of what discrimination is as possible.

## CO-OPERATION WITH THE POLICE

In 2016, the Non-Discrimination Ombudsman has worked in close co-operation with the police and the Finnish Prosecution Service. In matters of human trafficking and the implementation of deportations dialogue takes place between the parties nearly on a daily basis. The Ombudsman personally met with National Police Commissioner Seppo Kolehmainen numerous times over the past year, the staff of the Ombudsman visited the Police University College to train students in the identification of human trafficking.

## EFFORT TO PREVENT RACISM THAT TARGETS ASYLUM SEEKERS AND MEMBERS OF MINORITY RELIGIONS

During 2016, the Non-Discrimination Ombudsman received numerous complaints on anti-immigrant and racist demonstrations, which were held in the vicinity of reception centres or repeatedly in front of mosques as religious events were about to begin. The Ombudsman expressed concern on the topic to the National Police Board and emphasised that freedom of assembly and

freedom of speech were fundamental rights that the police must respect in their activities, but at the same time they must see to it that human dignity and other fundamental rights, such as the right to privacy and the sanctity of the home, the freedom of religion and children's rights are not violated.

With regard to demonstrations in front of buildings used for worship, the Ombudsman placed emphasis on the freedom of religion as provided in the Constitution of Finland, which the police must take into account when applying the Assembly Act. The police must also consider the need for appointing a different location for the demonstration. There are valid reasons for the relocation of a demonstration, if the demonstration is repetitively held in front of a building used for worship during a religious event or as it begins.

If a demonstration's purpose is to air a view on immigration and asylum seeking policy, it would be more appropriate for the demonstration to take place near places and buildings where decisions are made on immigration and asylum-related matters (e.g. the meeting of a local council) than in front of the residences where asylum seekers live and mosques.

A demonstration can in accordance with the Non-Discrimination Act be considered harassment, when the demonstration violates the human dignity of people who belong to a minority group or creates an atmosphere that is degrading, threatening or hateful towards them. In this case the police should interrupt the demonstration pursuant to Section 21 of the Assembly Act.

At the proposal of the Ombudsman, the National Board of Police sent a letter in January 2017 to Finland's police departments encouraging them to pay close attention to the issues brought up by the Ombudsman and, when necessary, to measures for the relocation or interruption of demonstrations.



Non-Discrimination Act. The Nazi flag had been clearly visible in the window for a period of eight months and the resident had refused to remove the flag despite being requested to do so by the landlord, the Foundation for Student Housing in the Helsinki Region (HOAS). A large number of people of foreign background live in the building in question, and they have felt the flag is insulting and threatening. The flag were generally visible to all people who entered the building's courtyard.

The Ombudsman feels that this demonstrates a fundamental lack of respect for certain people on the basis of their ethnicity and religion.

The case is important in principle in a time when hate speech and a hate-fuelled atmosphere seem to be gaining momentum. Hate speech, various hate crimes and other forms of racism have increased alarmingly and, at the same time, attitudes towards different minorities have grown tense. Some have started to question even the most fundamental human rights.

"Freedom of speech does not protect hate speech or other demonstrations that are in gross violation of people's human dignity. We do not want symbols that incite racism and discrimination to be spread in Finland," the Non-Discrimination Ombudsman stated when submitting the application to the tribunal.

#### **HATE SPEECH AND ANONYMOUS RECRUITMENT THEMES DURING VISIT BY GERMANY'S NON-DISCRIMINATION OMBUDSMAN**

Hate speech was also one of the main topics of discussion when Christine Lüders, the Director of the German Federal Anti-Discrimination Agency visited Finland in spring 2016. The Ombudsman has played a strong role in

the creation of stricter anti-hate speech practices. The participants of the round-table discussion, who included the Non-Discrimination Ombudsman, the media and other actors in the field, came up with ideas on how to tackle hate speech. Many of the idea proposed in the spring are now being implemented in practice. The discussions called for tougher measures from police and more co-operation with international actors. The police have established a separate hate crime unit, which is tasked with being present online and preventing hate speech. Fact checking services were also requested and more and more of these are being established all the time. The Non-Discrimination Ombudsman will for its part continue its work to tackle hate speech in 2017. This will be one of the Ombudsman's areas of focus for the coming year.

#### **SUPPORTING BASIC AND HUMAN RIGHTS OF THE SÁMI**

During the year, the Non-Discrimination Ombudsman met with Sámi actors in a multitude of contexts. The Ombudsman was also a speaker at events that dealt the rights of the Sámi. Non-Discrimination Ombudsman Kirsi Pimiä spoke at events such as a seminar in Helsinki in January which dealt with the theme of the Sámi, the Arctic and environmental decision-making as well as at the Keys to Equality seminar in Rovaniemi in September. In November-December, the Ombudsman visited Inari and met with representatives of the Finnish Sámi Parliament, the municipality of Inari and the representative of the Koltta Sámi and learned about the activities of the Koltta Sámi language nest.

During 2016, the Non-Discrimination Ombudsman followed early the status of childhood education and education among Sámi speakers both in the Sámi area and outside it especially closely. As part of her work to influences, the Ombudsman highlighted the rights of the



## INTERNATIONAL COOPERATION

The Non-Discrimination Ombudsman is required by law to participate in international and European co-operation. The Ombudsman takes part in close co-operation with her Nordic colleagues. The Non-Discrimination Ombudsman also participates in the activities of the EU's Agency for Fundamental Rights, works in co-operation with the European Commission Against Racism and Intolerance (ECRI) and is an active example in the European Commission's different working Groups.

The Non-Discrimination Ombudsman plays an active role in Equinet, the European Network of Equality Bodies both as an educator and a student and a strong partner in dis-

course. Discourse with European colleagues on shared challenges is fruitful. Equinet is a body in which European experts in non-discrimination work educate themselves and take part in co-operation to support one another professionally. Representatives of the Non-Discrimination Ombudsman's Office are active members in many working groups. During the year, the Non-Discrimination Ombudsman participated in social media training and the work of various working groups. The Strategic Litigation working group drew up a handbook on the use of the legal process when intervening in discrimination. The Policy Formation working group considers the policies drawn in discrimination legislation and the communications working group considers the best practices for use in different areas of communications.



FIBS R.Y.

**POLICE UNIVERSITY COLLEGE**

SUPPORT FOR VICTIMS OF RELIGION

**NORDISK OMBUDSMÖTE** MUSLIM NETWORK

ASSOCIATION OF FINNISH LOCAL AND REGIONAL AUTHORITIES

**SYSTEM OF ASSISTANCE FOR VICTIMS OF HUMAN TRAFFICKING**

ASSOCIATION FOR INSURANCE LAWYERS **LYHYTKASVUISET R.Y.**

**SOSTE CRUISE HSL FINANCIAL SUPERVISORY AUTHORITY**

SUOMI AREENA **EDUCA FAIR** FREETHINKERS **VR**

**SYMPOSIUM ON SPECIAL SPORTS FINNISH IMMIGRATION SERVICE**

**VAMPO FINANCE FINLAND PRIDE SÁMI PARLIAMENT**

ADVISORY BOARD ON ROMANI AFFAIRS ADVISORY BOARD ON ETHNIC RELATIONS

FINNISH ASSOCIATION ON INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

**FINNISH LEAGUE FOR HUMAN RIGHTS FINNISH REFUGEE COUNCIL**

WORLD VILLAGE **NORDIC COUNCIL OF MINISTER**

**REGIONAL STATE ADMINISTRATIVE AGENCIES**

NATIONAL BOARD OF POLICE **PARALYMPIC COMMITTEE**

AGENCY FOR FUNDAMENTAL RIGHTS

**SIGNMARK EQUALITY DAYS**

# CREATING A PRACTICE FOR INTERPRETING THE NON-DISCRIMINATION ACT

## KEY OBSERVATIONS IN STATEMENTS GIVEN IN COURT

In her statement to the court, the Ombudsman drew attention to the fact that the Romani often experience discrimination from private service providers. Typically this refers to refusal of service or added security measures while they are a customer. Both phenomena are based on often stereotypical beliefs as a result of which Romani customers are not treated as individuals but as a representative of their group. The Ombudsman has also leaned of cases in which a private service provider has advised their employees to keep an eye on persons who are members of the Romani community. In her statement, the Ombudsman reminded that an instruction or command to discriminate are forms of discrimination prohibited by law. Thus an employer may not give instructions to their employees that can be classified as ethnic profiling.

The Ombudsman gave a statement in court in a case where the matter concerning a transport service that was granted pursuant to the Act on Services Provided for People with Disabilities. In the case, the municipality had refused to allow a person to use a taxi service produced by a family members for transport service funded by the municipality and as a result the person's possibility of choosing a taxi service provider were more limited than those of others. The Ombudsman drew the courts attention to the fact that due to the decision by the municipal authority the person was placed in an unfair position in comparison to other disabled people living in the municipality, who had been granted the right to a transport service. The Ombudsman noted that the criteria for

discrimination need not apply personally to the person who experiences discrimination, but it can also apply to a person who is related to the person. According to the Ombudsman, this was a matter of another reason related to the person. That the person who had the right to taxi transport was denied the right to use services provided by a family member who had a taxi service could be considered a basis for discrimination.

The Non-Discrimination Ombudsman gave the court a statement on a case which concerned the provision of internet banking codes to a visually impaired person. The Constitutional Law Committee has found that the Non-Discrimination Act is the primary source of legislation in the scope of normal legislative procedure normal that should be used in cases of discrimination. The Non-Discrimination Act realises the provisions in the Constitution of Finland, international human rights treaties Finland is bound by and EU legislation that promote equality and prohibit discrimination. The Ombudsman emphasised that in accordance with the Supreme Court's decision-making practices in situations where the law must be interpreted, the selected interpretation must be the one that best promotes fundamental and human rights.

The Ombudsman gave a statement to the court with regard to the separate claims for damages and restitution requested by the victim, and noted that sentencing someone to restitution in a discrimination case does not prevent the victim from also receiving compensation for damages. With regard to the assessment of the imposed penalty and other sanctions, the Ombudsman em-

The Non-Discrimination Ombudsman's important tool and method of influence is its opportunity to give statements and be heard in cases handled by the courts and the National Non-Discrimination and Equality Tribunal of Finland.

It is important to get preliminary rulings for the the new law that came into force in the beginning of year 2015.



## Non-Discrimination Act:

### **SECTION 27 HEARING OF THE NON-DISCRIMINATION OMBUDSMAN**

A court must, in a matter handled by it concerning the application of this Act, reserve an opportunity for the Non-Discrimination Ombudsman to be heard insofar as the matter pertains to the authority of the Ombudsman. The prosecutor must reserve an opportunity for the Ombudsman to be heard prior to bringing charges for an offence referred to in chapter 11, section 11 of the Criminal Code.

The Non-Discrimination Ombudsman's important tool and method of influence is its opportunity to give statements and be heard in cases handled by the courts and the National Non-Discrimination and Equality Tribunal of Finland.

Precedents are now needed on the application of the Non-Discrimination Act, which entered into force in 2015. The prosecutor and courts have a significant obligation to hear the Non-Discrimination Ombudsman in cases related to discrimination. The legislator's primary objective has been to give the Ombudsman as an expert of discrimination to possibility to influence the development of civil and criminal liability for discrimination in case law.

In 2016, the Ombudsman continued to actively use her right to give statements and was also heard at many trials.

phasised that in accordance with the EU Directives that bind Finland and steer non-discrimination legislation, the sanctions must be effective, proportionate and preventative, and that, as a rule, when determining the penalty the grounds for increasing punishment referred to in Chapter 6 Section 5 of the Criminal Code of Finland, should be applied. The Non-Discrimination Ombudsman has also drawn the attention of prosecutors to the fact that it may be very difficult in practice for a person who has experienced discrimination to present a reasonable claim for compensation. According to the Ombudsman it would be desirable for the prosecutor to be in favour of the victim's civil law claims in discrimination cases.

#### **A STATEMENT TO THE NATIONAL NON-DISCRIMINATION AND EQUALITY TRIBUNAL OF FINLAND**

The National Non-Discrimination and Equality Tribunal of Finland can request a statement from the Non-Discrimination Ombudsman in the cases it handles. One statement was related to the accessibility of a restaurant.

The National Non-Discrimination and Equality Tribunal of Finland was hearing a case in which a person felt they were subjected to discrimination on the basis of their disability because the restaurant's accessible toilet was used as a storage room. The restaurant disputed that the toilet could not be used by customers. In her statement, the Ombudsman felt just as the tribunal did that this was a matter of direct discrimination as referred to in Section 10 of the Non-Discrimination Act. The claim by the defendant that the accessible toilet could again be used by customers when the claimant visited, was not sufficient for annulling the discrimination assumption that arose. According to the assessment of the Ombudsman, the evidence shown during the case created the assumption that an accessible toilet had been in other use for a longer period of time, and this was not a matter of short-term arrangements for the purposes of cleaning.



The Ombudsman noted that the criteria for discrimination need not apply personally to the person who experiences discrimination, but it can also apply to a person who is related to the person.

It may be very difficult in practice for a person who has experienced discrimination to present a reasonable claim for compensation.

The Ombudsman emphasised that in accordance with the Supreme Court's decision-making practices in situations where the law must be interpreted, the selected interpretation must be the one that best promotes fundamental and human rights.

# EQUALITY MUST BE CONSIDERED IN LEGISLATIVE PREPARATION

As an expert in matters related to equality and the rights of minorities and a monitor of the rights of foreign nationals the Non-Discrimination Ombudsman influences legislative work in its various stages. Generally the Ombudsman gives a statement at the preparation stage and when the Parliament discusses the legislative proposal. The Ombudsman can also participate as an expert member in working groups that ministries appoint to prepare laws.

The Ombudsman reminded legislators of their obligation to promote equality and apply pro-human rights approaches to the preparation of legislation. The Chancellor of Justice has also had to remind legislators of this for example in cases related to the preparation of provisions that concern a building's accessibility (OKV/1246/1/2016). The final judgement on the case find: "The proposed Decree's provisions must be justified credibly with regard to the requirements laid down in the Constitution of Finland and the Convention on the Rights of Persons with Disabilities. The memorandum must make it apparent how these provisions will not cause a decline in the level of accessibility. It is our view that the proposed Decree in its current form cannot realise the equality and non-discrimination of persons with disabilities in the manner required by the Constitution of Finland and the Convention on the Rights of Persons with Disabilities.

In 2016, the Non-Discrimination Ombudsman gave twenty statements regarding legislation proposals: e.g. on basic education legislation, various legislative proposals related to the Health and social care reform, early childhood education legislation, the accessibility decree and naturally on legislation pertaining to foreign nationals.

A similar theme in all these statements was a concern based on the belief that fundamental and human rights had not been taken into account sufficiently and that equality impacts had not been assessed.

## AMENDMENTS TO LEGISLATION CONCERNING FOREIGN NATIONALS

Numerous amendments have been made to the Aliens Act during this and the previous Government term that have made the law more stringent. 2016 was not an exception. In 2016, the Non-Discrimination Ombudsman gave eight statements on Government proposals to amendments to legislation that applies to foreign nationals. In most of the statements, the view of the Non-Discrimination Ombudsman was that the proposed amendments were problematic from the perspective of human rights and especially with regard to the legal protection of asylum seekers.

At the beginning of 2016, the Government proposed the more effective operations of courts in cases concerning international protection. The legislative proposal is problematic in many ways and it weakens the legal protection of asylum seekers by cutting the appeals period for asylum applications and limiting the right of asylum seekers to legal aid. The Non-Discrimination Ombudsman also felt that the proposed amendments did not in actuality improve the effectiveness of the system in the desired way. The Non-Discrimination Ombudsman felt that the proposed amendments, especially cutting the period for appeals in asylum applications from 30 days to 14 days as well as the significant restrictions placed on legal aid in matters concerning asylum applications caused a significant problem equality-wise. Asylum



# PROMOTION OF EQUALITY

## A LEGAL OBLIGATION

### for authorities and private actors

The Non-Discrimination Act provides that authorities, education providers and employers have an obligation to promote equality.

An authority must use its own activities to assess the realisation of equality in e.g. preparation of matters, decision-making, administrative activities and practices, management, profit steering, financial planning, strategic planning and communications. When assessing the realisation of equality, education providers must pay close attention to the pupils' selection criteria, the used learning materials, measures that prevent harassment and bullying, equality of teaching situations, assessment of student performance and the equality expertise of teachers. Employers must assess the realisation of equality in the workplace and, taking the workplace's needs into account, develop working conditions and the operating practices that are used when selecting staff and making decisions that concern staff.

Authorities, education providers and employers who employ at least 30 people on a regular basis have an obligation to draw up an Equality Plan on the measures they will implement to promote equality. A plan in accordance with the new Non-Discrimination Act must be completed by 1 January 2017 and for this reason the Non-Discrimination Ombudsman focused on providing information about planning and on supporting different parties in the planning process.

Taking equality-related matters into account in any organisation increases the members' experience of fairness, which improves workplace satisfaction and com-

mitment. Equality planning can also help in finding the means with which to attract more diverse expertise than previously. If there are problems with the workplace environment or its operating practices, the Equality Plan can act as a tool for influencing these. However, the document alone cannot help, if the organisation and its members do not commit to promoting equality.

#### WORKSHOP TO HELP WORKPLACES IN PLANNING

In 2016, the Non-Discrimination Authority organised workshops for private sector actors with the objective of providing concrete advice and instructions to support enterprises in drawing up a good Equality Plan and to systematically promote equality in the company's activities. The project comprised three workshop meetings and a one-on-one meeting between each company and the Non-Discrimination Ombudsman's experts. Participation was free-of-charge, and companies were selected via an open application process. The workshops kicked off with the equality planning process and together, participant drew up benchmarks for a workplace-specific assessment. After the first workshop, the Non-Discrimination Ombudsman's experts visited workplaces for a one-on-one meeting. These meetings included a review of the results for the workplace-specific assessment and brainstorming on how these should be taken into account in the measures included in the company's Equality Plan. At the end of the project, the companies met once again to review their plans and ponder on how and when the Equality Plan should in future be updated. Four private sector organisations participated in the workshops.

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## EQUALITY PLANNING A NEW PROCESS FOR ENTERPRISES

The organisations that took part in a joint planning project were very motivated to promote equality and draw up a good plan that genuinely and pragmatically steered the organisation's activities. The most challenging part of the work was to interpret the results of the workplace assessment carried out in the early stages of the process as well as using these results to create concrete measures for promoting equality.

As a result of planning, management was provided tools with which to treat their employees as individuals. Planning also created clear processes for such things as intervening in harassment. The organisation devised a notification path and a discussion was held on who holds responsibility for seeing to it that harassment ends. Supervisors felt that the clear guidelines listed in the Equality Plan supported their intervention in harassment.

The organisations involved in the project voiced their concerns about inappropriate language use and situations that arise from prejudices, and participants noted that the planning process in itself increases awareness on diversity and motivated employees to reconsider their own attitudes and behaviour.

The Non-Discrimination Ombudsman noted that on the basis of the workshop project as well as the enterprise training event, equality planning was a foreign concept and new for enterprises. It will take a great deal of time to understand the theme and to acclimatise to the new way of thinking. Equality planning does not seem to be an established part of working life in the same ways as e.g. the assessment of gender equality.

The workshop trial was a one-time event, but the Non-Discrimination Ombudsman will when possible advise and train companies again in the future in equality planning.

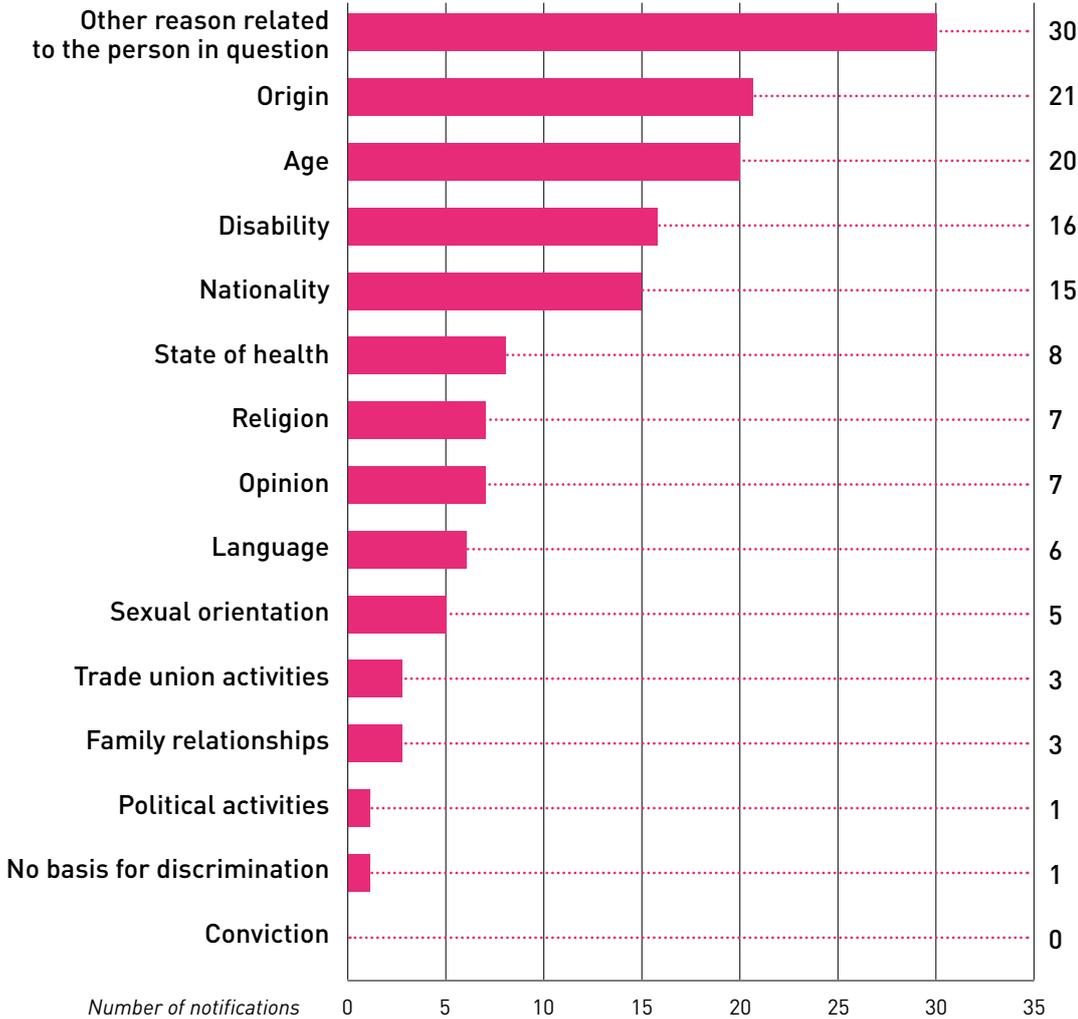


## Complaints received by the Non-Discrimination Ombudsman in 2016 that are related to working life.

The Non-Discrimination Ombudsman does not have the authority to intervene in individual case if discrimination in working life. Occupational safety authorities are responsible for intervening in discrimination. Even so, over the course of the year, the Non-Discrimination Ombudsman received nearly 150 complaints related to working life. In these instances the Ombudsman provided advice or directed to complainant to another authority.

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**BASIS FOR DISCRIMINATION IN THE WORKPLACE**



## TIPS FOR EQUALITY PLANNING

### HOW TO DRAW UP A GOOD EQUALITY PLAN FOR A SCHOOL

The most important aspect for promoting equality is not a single document, but the measures that are implemented as a result of the document. Teachers and other school staff act as an example to every day pupils and guardians on how to build an equal operating environment. Respectful interaction builds the foundation for a safe and equal atmosphere.

The promotion of equality must be based on the needs of the school community's members, especially pupils. They should thus be heard when measures are being planned. Members of minority groups are often the targets of discrimination and bullying. Their voices need to be heard.

An Equality Plan can include measures that apply to the entire school community, but it is essential to consider the operating practices of adults in the school such as their ability to intervene in discrimination and improve the accessibility of teaching. An Equality Plan is not a tool for controlling pupils, but a tool for creating a safe study environment for them.

Drafting of an Equality Plan begins with an assessment of the status quo. For this reason, it is recommended that the pupils, staff and guardians are requested to answer questionnaires. Additionally it is a good idea to use statistical data such as materials from school health surveys. It is a good idea to consider what type of information is needed and available for monitoring the implementation of the plan. Will the school be able to monitor the number of harassment and bullying incidents?

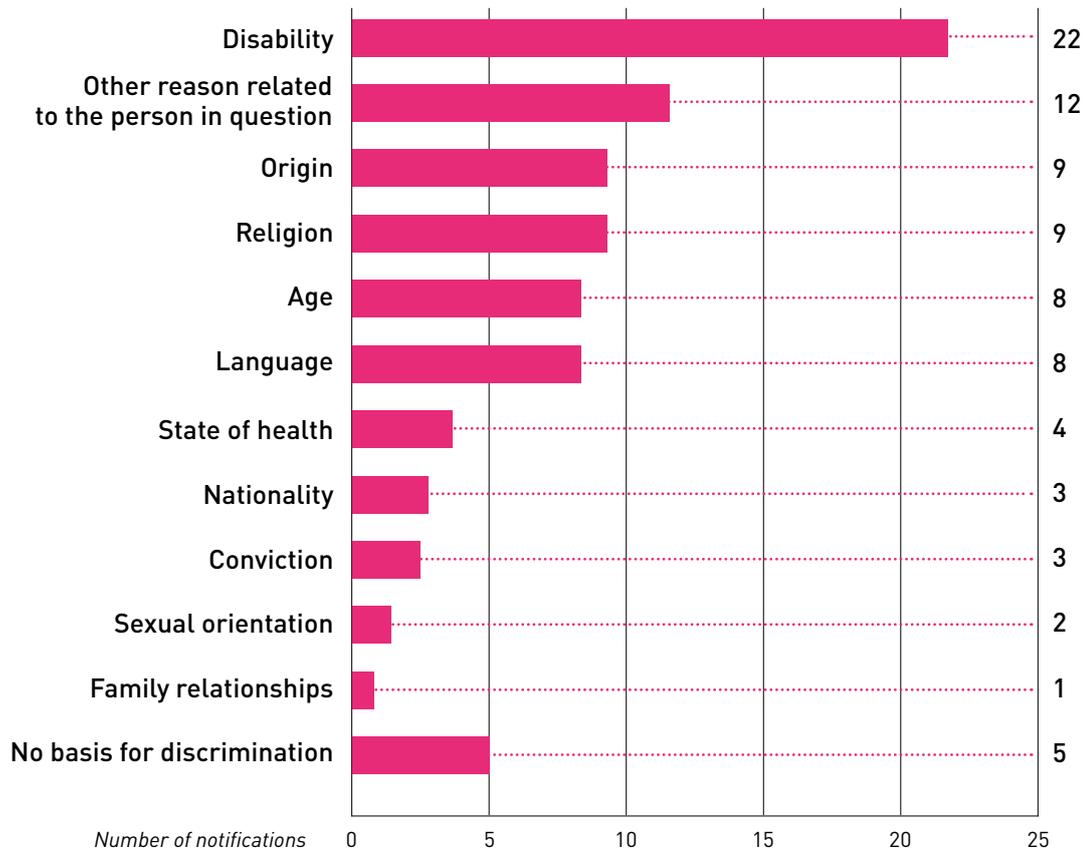
In order for the pupils to answer the questionnaire in a way that provides appropriate and helpful information for the preparation of the plan, a lesson on the topic should be held prior to answering the questionnaire. The concept of equality can also be contemplated with mirrors and games (e.g. a word game on the topic of equality or a privilege walk).

The views of guardians can be heard for example at parent-teacher meetings, via Wilma or by asking them to respond to an electronic questionnaire. It may be reasonable to consider how the views of guardians, who are members of various minorities and guardians who generally do not take part in co-operation between the school and the home, can best be heard. If only a select group of guardians generally participate, a change to this situation could be one of the goals listed in the Equality Plan.

An Equality Plan need not try to solve all observed problems in one go. Measures can be scheduled for different years, and they can be added when the implementation of previous measures has been completed. The implementation of an Equality Plan should be interwoven into all the school's activities. A signal given by school management that equality work is valued and important will encourage staff to use their time on the realisation of agreed to measures and approaches.

Work will not end once a plan has been completed. A concrete timetable should be put in place for monitoring its implementation. The entire school community including guardians should be kept up to date on the plan's preparation process and the ready plan. The plan can be presented for example at a parent-teacher meeting.

## EDUCATION AND TEACHING - BASES FOR DISCRIMINATION



## Quick tips for a school's non-discrimination planning process:

1. Organise age-appropriate lessons for pupils on equality and non-discrimination.
2. Establish a working group tasked with the school's planning work, which can also have student representatives.
3. Notify pupils, guardians and staff that the planning work has begun.
4. Assess the educational institutions status quo; listen to what the pupils, guardians and staff have to say.
5. Select the measures on the basis of a preliminary survey.
6. Determine persons of responsibility.
7. Draw up a time table and monitor how well you keep to it.
8. Notify the pupils, guardians and staff on equality work.
9. Update the plan to meet with new requirements.



## How to draw up a good equality plan for a municipality

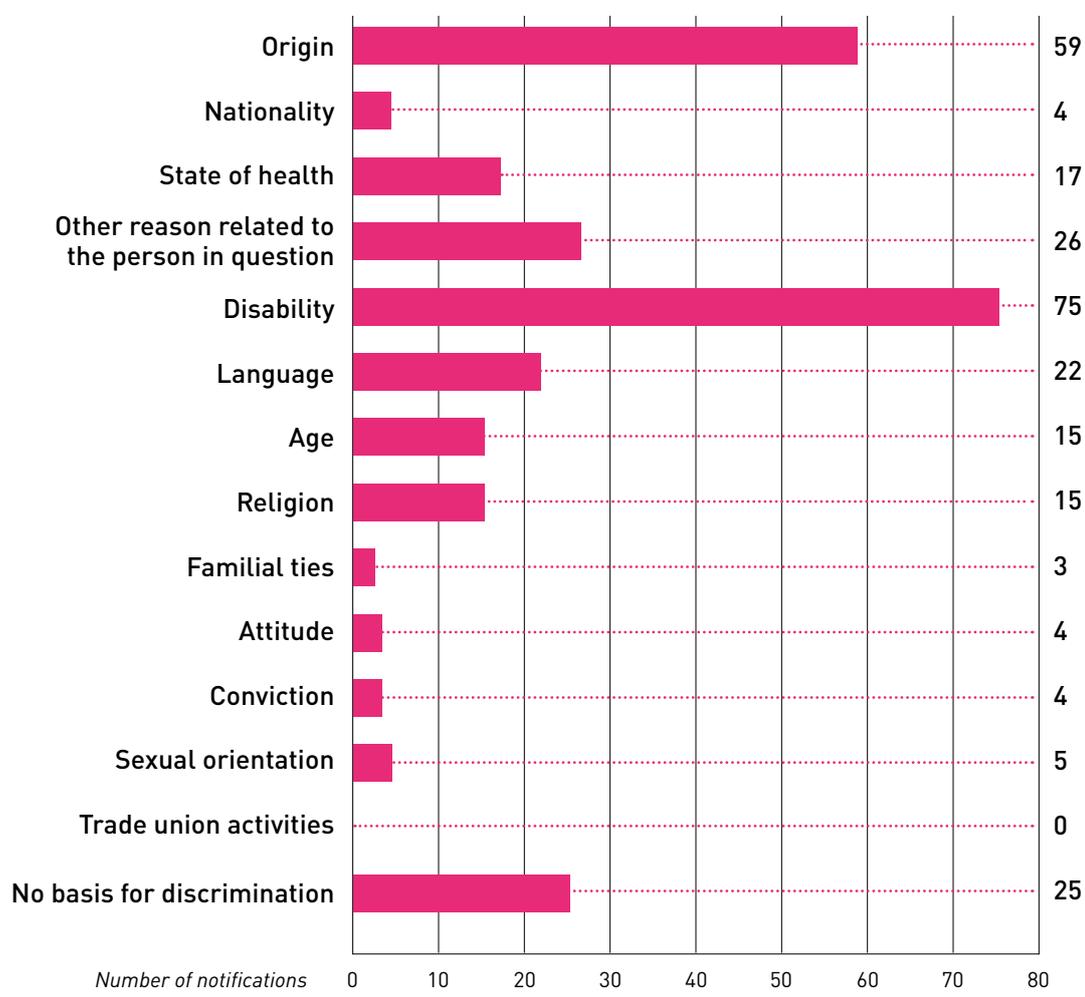
1. An Equality Plan is a tool, not a goal. More essential than the document itself, are the activities that improve the realisation of equality in the ways needed in the specific municipality's different sectors. For this reason, it is pertinent to carefully consider the type of equality planning process that will produce the best information on development needs in the municipality in question, and which is the most effective and feasible.
2. As a rule, the plan must be drawn up by sector. Although the municipality has one shared Equality Plan, its preparation must be completed by sector so that sector-specific data is available for planning work and so that measures can be determined by sector. When hearing the opinions of municipality residents and stakeholders it is a good idea to ask about different services by sector, so that the received feedback is as detailed as possible.
3. At the beginning of the equality planning process a preliminary assessment is carried out on the realisation of equality. It is recommended that it is based on numerous different methods such as questionnaires, statistical materials and discussion/hearing events and staff workshops. The preliminary assessment should be carried out at least partly sector-specifically, do that the different starting points of different sectors are taken into account.
4. An authority's Equality Plan or at least the preliminary assessment for this, must cover all the basis of discrimination included in the Non-Discrimination Act. On the basis of the preliminary assessment, the parties drafting the plan can select which reasons for discriminations measures will be focused on. Focus areas can be changed when the plan is updated. It must be noted that the general obligation of all authorities to promote equality applies to all bases of discrimination covered by the Non-Discrimination Act regardless of which bases for discrimination are included in the Equality Plan.
5. During the preparation stage, it is a good idea to hear the views of municipality residents and various stakeholders, such as NGOs and service users in as versatile as way as possible. There are numerous ways in which the views of residents and stakeholders can be heard. Different types of questionnaires can be implemented in the otakantaa.fi web service, either as a single questionnaire for the entire municipality or sector-specifically for residents and stakeholders, such as NGOs. Views and opinions can also be collected regionally at town halls and similar events.
6. At these events, an effort should be made to ensure that the views of minorities are also heard. These minority groups can include the aged, children, people with different disabilities, various immigrant groups as well as minorities based on religion or beliefs.
7. Existing data on statistics, such as population statistics, SotkaNet and TEO or from questionnaires such as the National school health survey can be used as part of the preliminary assessment. If no statistical data on municipality residents is available on the basis of which information on wellbeing or hobbies can be itemised into groups, one of the Equality Plans measures could be the systematic development of the information base for example by implementing questionnaires that are intended for certain population groups.

- 8. A responsible person or unit should be appointed for each measure included in an Equality Plan.
- 9. The resources reserved for the realisation of the Equality Plan should be clearly determined in the plan. The needed resources must also be taken into account in budgets.
- 10. A timetable should be put in place for the monitoring and updating of the plan, and a people must be appointed to hold responsibility for these. The Non-Discrimination Act does not set a deadline for updating. It is recommended that the plan is updated at least once every three years. Updates

can also be implemented continuously when new needs are observed and/or when previously decided on measures are completed.

- 11. Municipalities also have an obligation as an employer to draw up an Equality Plan. Operational and human resources-based Equality Plans can be combined, but the plan must clearly state which parts of the plan are for the municipality as an authority and which for it as an employer.
- 12. If the authority draws up an operational gender equality place this can also be combined with the Equality Plan.

**BASIS FOR DISCRIMINATION - MUNICIPALITY AS THE OTHER PARTY**



Complaints submitted to the Non-Discrimination Ombudsman, in which a municipality is the suspected of discrimination. In the majority of cases, suspected cases of discrimination concern people with disabilities.

The largest group that the non-discrimination planning obligation for public authorities applies to is municipalities. Municipalities are very varying in size, but certain principles pertain to operative equality planning in all municipalities.

# HUMAN TRAFFICKING

## RETURN OF VICTIMS OF HUMAN TRAFFICKING TO ITALY TO BE CONSIDERED MORE CLOSELY AND ON AN INDIVIDUAL-BASIS IN THE FUTURE

Under the Non-Discrimination Ombudsman Act (Laki yhdenvertaisuusvaltuutetusta 1326/2014), the Non-Discrimination Ombudsman shall also act as the National Rapporteur on trafficking in human beings, an autonomous and independent authority with the duty of monitoring phenomena related to human trafficking. The Ombudsman draws up and commissions reports on human trafficking and related phenomena and monitors Finland's compliance with international human rights obligations and the effectiveness of its legislation in this respect.

## NUMBER OF NIGERIAN VICTIMS OF HUMAN TRAFFICKING IS GROWING

In 2016, while acting as National Rapporteur the Ombudsman decided to draw up a report on the treatment of sexually exploited victims of human trafficking originally from Nigeria in the asylum and resident permit application process. The report was based on information received by the Rapporteur that some victims of human trafficking who had been returned to Italy from Finland had had to live on the streets with their children and had once again fallen victim to sexual exploitation. If the victims of human trafficking have originally applied for asylum in Italy they are as a rule refused entry and returned to Italy on the basis of the Dublin Regulation to await the processing of their application for asylum.

The purpose of the report was to explore how the Finnish Immigration Service applies the Aliens Act (Ulkomaalaislaki 301/2004) and its provisions on the grounds for residence permits in the cases of victims of human trafficking. In the report, special attention was paid to those seekers of international protection and asylum who had already been identified as victims of human trafficking by the authorities or whose story about being a victim of human trafficking had been acknowledged as a fact by the Finnish Immigration Service.

The report is topical for many reasons. The number of people seeking protection in Europe has been greater over the past few years than at any time after World War II. The share of asylum-seekers of Nigerian origin has grown and numerous international actors have reported on cruel sexual violence and exploitation, which especially women and girls fall victim to on their journey or their arrival to Europe. According to assessments at international level, making women of Nigerian origin victims of human trafficking related to sexual exploitation in Europe is one of the most extensive and best organised current phenomena in human trafficking. Persons of Nigerian origin are the most likely persons to end up as victims of human trafficking in the European Union, unless human trafficking within the EU is taken into account.

The report is also topical from Finland's perspective. Sexually exploited victims of human trafficking, who are of Nigerian origin have been the largest group of people in the system for the assistance of victims of human trafficking for several years, and their share of people seeking help



In its reasoning for the decisions, the Finnish Immigration Service assessed that with regard to basis for asylum, the applicants were not in danger of falling victim to treatment that was inhumane or violated human dignity in either Italy or Nigeria. With regard to criteria for a residence permit, the Service stated that the applicants can when necessary turn to Nigerian authorities if they feel they are threatened by a private person, and that they were not in an especially vulnerable position in Nigeria, because they had a safety net made up of family in their home country. In cases where the Dublin Regulation had to be applied, the Service felt that Italy as an EU Member State has committed to creating a system to help and protect victims of human trafficking. It was the Finnish Immigration Service's view that the applicants can seek help and protection in the country in question. The Rapporteur observed that the decisions have contained little on the assessment of a child's interests.

#### **DEPORTATION OF VICTIMS OF HUMAN TRAFFICKING TO ITALY EXPOSES THEM TO A RISK OF CONTINUED EXPLOITATION**

The Ombudsman acting as Rapporteur stated that it was her conclusion that the application of the Aliens Act was partly unpredictable and unequal. On the basis of the decisions, it is difficult to draw conclusions on when the applicant will or will not receive a residence permit and when the applicant will be granted a residence permit on the basis of human trafficking or a personal humane reason. The Rapporteur finds that, as a rule, the Finnish Immigration Service takes a narrow view on applying the requirement of being in a 'particularly vulnerable position' when it considers granting a victim of human trafficking a residence permit on a continuous basis. The Rapporteur

also found that the assessment of the victims' situation is partly lacking and at the very least inconsistent and that research on the human trafficking-related phenomena, the individual consequences and impacts caused by trafficking or the risk of falling victim yet again is used poorly in decision-making.

The Ombudsman acting as Rapporteur also noted that, when making decisions, the Finnish Immigration Service does not appear to assess the issues Finland is required to assess under international human rights treaties as regards victims of human trafficking or the measures that Finland takes to fulfil its obligations to comply with international treaties as regards individual applicants. The Rapporteur referred to the prevention of repeat victimisation as a special human rights regulation, according to which Finland must make an effort to take active measures to prevent the victims of human trafficking falling victim repeatedly and to promote their integration in the society of the receiving country in situations where entry is refused (Article 16).

The Rapporteur also felt that decision-making practices did not appear to assess the circumstances of the victim of human trafficking and the resulting risk of re-victimisation, or the best interests of the child at such individual level that it would make it possible to assess in practise whether the international human rights regulations can be complied with when the applicant and the applicant's children are refused entry to Finland. The Rapporteur felt it was extremely problematic that Finland does not take adequate measures to ensure that, when refused entry, the applicant and the applicant's children are directed to receive the necessary assistance and support in the receiving country. The Rapporteur felt that Finland seems



victim of human trafficking had small children with them. This view applied to both those returned under the Dublin procedure and those victims of human trafficking who had been granted asylum and residence in Italy.

During the trip, it became apparent that Italy is unable at the moment to help victims of human trafficking whose human trafficking status is acute and who, even the police have asserted, are in danger. If some time has passed since the person first became a victim, it is all the more difficult to access help and proceeding to a criminal process is all the more challenging.

Italy makes independent decisions on who has access to the services intended for victims of human trafficking in Italy. A victim of human trafficking returned from Finland to Italy is not automatically transferred from Finland's system to Italy's system. The delegation was given conflicting data on how and who Finnish authorities should notify when Finland intends to return a victim of human trafficking to Italy. Although it was believed that exchange of information was important with regard to providing help for the returned victim, authorities were unaware of what channels through which the information should be transferred from one authority to another. The Ombudsman acting as Rapporteur feels that the shortcomings in information flow increase the risk that victims of human trafficking will once again fall victim to trafficking. The risk is particularly significant when the victim is psychologically traumatised and has small children.

According to the travel report, authorities currently view the Dublin Regulation critically. This is due to the increased number of migrants and asylum seekers. As

the system for the reception for asylum seekers and the system for the assistance of victims of human trafficking are overloaded and shelters are full, it is the delegations view that people can get help at random and it is up to the activeness of the victim whether this happens. The Ombudsman acting in the role of Rapporteur sees it as very challenging from a human rights perspective that receiving help could be dependent on the ability of a traumatised victim travelling with small children to seek help.

The travel report also states that it is difficult for victims of human trafficking who are asylum seekers to get help in Italy because the asylum seeker reception system and assistance of victims of human trafficking are separate processes. The delegation remained unclear on whether someone who was a victim of human trafficking and was returned under the Dublin procedure had access to help, and how the likelihood of someone falling victim to human trafficking is assessed in an asylum application process. In 2016, Italy's authorities made an effort to bring these two processes closer to one another with an approved action plan, but the work has only just begun.

In February 2017, the Finnish Immigration Service released information on its information acquisition trip and its results. Director General Vuorio announced that the information gained during the trip would have an influence on decisions made by the Finnish Immigration Service. In the future, the Service will give closer and more individual thought to the return of human trafficking victims to Italy. The Ombudsman acting as National Human Trafficking Rapporteur actively follows the Finnish Immigration Office's decision-making.



## Monitoring of removal from a country

# FORCED REMOVAL FROM COUNTRIES TO INCREASE – NEED FOR MONITORING TO GROW

Both in Finland as well as elsewhere in Europe, the number of asylum seekers grew rapidly in 2015. The increase is based on numerous factors, but extended conflicts in different countries were a key reason. During 2015, a total of 32,000 asylum seeker arrived in Finland. In May 2016, the Finnish Immigration Office updated the security assessments on Afghanistan, Iraq and Somalia. Around the same time, numerous more rigorous provisions were added to the Aliens Act, and e.g. humanitarian protection was removed completely. As a result of these measures, the number of negative asylum decisions has increased exponentially both relatively and numerically.

In order to make the return of people, who had received negative asylum decisions more effective, Finland signed a return co-operation declaration with Afghanistan. It is expected that removals from Finland to Afghanistan will increase significantly.

As a result of the amendments to the Aliens Act and the more stringent country-specific policies implemented by the Immigration Office of Finland, more and more people are receiving negative asylum decisions. The significant jump in negative decisions, more effective removal procedures and the requirements in the so-called Frontex Regulation for the presence of a monitor will increase the need for monitoring removals in coming years.

The Non-Discrimination Ombudsman has not, as of yet, not received permanent personnel resources or appropriations for the costs resulting from monitoring. In 2016, the work of the office's two removal monitors was financed with temporary project funding. The Non-Dis-

crimination Ombudsman is now concerned about whether Finland will be able to monitor removals in the future at all, if a sufficient amount of resources is not allocated to monitoring.

### MONITORING OF THE IMPLEMENTATION OF REMOVAL TO BECOME STRONGER IN EUROPE

During 2016, a great deal took place in Europe in the area of monitoring. It seems that the Directive on common standards and procedures in Member States for returning illegally staying third-country nationals which entered into force in 2008 will finally be taken seriously. An important demonstration of this is the Regulation of the European Parliament and of the Council on the European Border and Coast Guard. According to the Regulation, there must be a monitoring party present on every Frontex-funded flight. The Regulation also references fundamental rights, non-refoulement, and human rights agreements in numerous places.

Article 28 of the Regulation obligates Member States participating in a removal operation and the European Border and Coast Guards Frontex to ensure that during the removal operation fundamental rights and the principle of non-refoulement are respected and that force is used in the correct degree. At least one monitor must be present for the entire duration of the return process. According to the Regulation, Frontex has set up a reserve of monitors for the use of Member States when implementing removals. These monitors see to the monitoring of forced removals as referred to in the Returns Directive. Monitors must be trained in their task.



On the basis of the already implemented monitoring, the police have for the most part carried out their jobs professionally and appropriately. According to statistics maintained by the Police, a total of 1,671 persons were involuntarily removed from Finland in 2016. With the resources currently available, only a small share of removals can be monitored. In 2016, a monitoring party took part in 22 deportation operations: the monitor was present on 12 of the flights and in 10 cases only monitored the departure stage.

According to observations made by monitors, there were some shortcomings in the use of interpreters and in interpretations. The Ombudsman feels that interpretation services should be used if the implementing authority and person being removed from Finland do not have a common language. In autumn 2016, a monitor was monitoring a removal situation where the use of force seemed excessive and was contrary to the Police's own guidelines. The Ombudsman discussed the matter first with police management and later submitted a complaint on the matter to the Parliamentary Ombudsman.

On the basis of observations made the monitors, co-operation between the police and certain reception centres and the Metsälä detainment unit need to be developed. Building confidential co-operation will help people to become orientated with their return and prepare for their departure, and guarantees among other things the continuity of the returned person's health care. It would be important for the police and staff at reception units to work together in order for removal from the country to succeed when nothing more can be done to gain permission to stay in the country.

The Non-Discrimination Ombudsman can assess removals both according to observations made by parties monitoring removals and by examining escort reports drawn up by the police. However, the quality of police escort re-

ports has varied, and the monitors have given the police feedback on this. The leading officers of some escort patrols write up detailed report, but other escort reports are very limited and the monitor cannot on their basis assess the actions of the police in a removal situation. Comprehensive escort reports are also of benefit to the police. This is particularly evident in situations in which the actions of the escort have been criticised. Good quality escort reports can also influence the spread of good practices.

The drafting of a deportation regulation by the National Board of Police has been underway for quite some time and it would be important for the up-to-date regulation to be implemented in practice as a guideline for police activities especially as the number of removals is growing. As removals increase more police escorts are also needed. Escorting persons, who are to be removed from the country is a special task and in order to ensure removals that comply with human rights the police are investing in the training of new escorts and escort patrol leaders.

With regard to the removal of persons from a country, the Non-Discrimination Ombudsman and the police must take into consideration the person's right to privacy and the confidentiality obligation that binds them. From the perspective of police activities, removal operations always include tactical and operative aspects that must be kept secret. One of the key reasons for monitoring is to help in the development of removal activities so they comply completely with human rights and fundamental rights. For this reason, the focus of monitoring work is not on publicity or the extensive dissemination of information. The Non-Discrimination Ombudsman and monitors do not provide information on planned removals and, as a rule, do not publish information on the implementation of individual removals afterwards.



# PERSONNEL OF THE OFFICE OF THE NON-DISCRIMINATION OMBUDSMAN

## PERSONNEL:

The following persons have worked at the office of the non-discrimination ombudsman in different durations during the year 2016.

Non-Discrimination Ombudsman **Kirsi Pimiä**  
Head of Office **Rainer Hiltunen**  
Senior Officer **Jussi Aaltonen**  
Senior Officer **Måns Enqvist**  
Senior Adviser **Robin Harms**  
Senior Officer **Pekka Hätönen**  
Senior Officer **Mikko Joronen**  
Senior Officer **Päivi Keskitalo**  
Senior Officer **Ulrika Krook**  
Senior Officer **Pirjo Kruskopf**  
University trainee **Niko Kuronen**  
Researcher, University trainee **Hanna Kähkönen**  
Department Secretary **Elena Leinonen**  
Department Secretary **Miia Mäkelä**  
Communications trainee **Konsta Naumi**  
Special Planning Officer **Päivi Okuogume**  
Senior Officer **Venla Roth**  
Senior Officer **Aija Salo**  
Senior Officer **Pamela Sarasmo**  
Communications Officer **Pirjo Sohlo**  
Communications Officer **Maria Swanljung**  
Researcher **Toni Tuomi**  
Senior Officer **Tiina Valonen**  
Senior Officer **Hanna Välimaa**  
Planning Officer **Massimo Zanasi**

TOGETHER FOR  
EQUALITY



TRADE  
UNION  
ACTIVITY

ORIGIN

NATIONALITY

OPINION

BELIEF

LANGUAGE

FAMILY  
RELATIONSHIPS

DISABILITY

RELIGION

STATE  
OF HEALTH

AGE

POLITICAL  
ACTIVITY

SEXUAL  
ORIENTATION



**NON-DISCRIMINATION**

OMBUDSMAN

YHDENVERTAISUUSVALTUUTETTU  
DISKRIMINERINGSOMBUDSMANNEN  
OVTTAVEARDÁSAŠVUOĐAÁITTARDEADDJI