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THE REPORT OF
**THE NON-DISCRIMINATION
OMBUDSMAN**
TO THE PARLIAMENT

2018

FINLAND

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The Ombudsman's foreword: Stories, deeds and accomplishments for equality

You are holding in your hands the Non-Discrimination Ombudsman's first report to the Parliament. When the chance comes once every four years to bring issues directly to the legislator, we approach the matter with due solemnity. What is the state of equality in Finland, what is in order and what is wrong, which issues do we want to discuss, and what development needs exist in relation to operating procedures and legislation? Together as the staff of the Ombudsman's Office we have gathered material for this report and simultaneously carried out two separate background studies. The Ombudsman's scope of operation is extremely broad, and all matters cannot be given as thorough an analysis as we would like. This does not mean that these issues would not be equally important or that these matters would not be acknowledged in the daily work. To ensure readability and cohesion, it has been inevitable to limit the discussed topics. From the Parliament's viewpoint, the topics and themes of the report relate to the scope of various Committees, and it is desirable that the report will be handled accordingly.

The task of the Ombudsman is to supervise Finland's compliance with international human rights obligations and the effectiveness of national legislation, which is why statements regularly include complaints and highlight problems. This report, too, raises people's experiences of discrimination and other infringements, and evaluates the development needs in legislation from the point of view of human and fundamental rights and equality.

I want to perceive the future positively. Equality as such is set in stone; it is one of the most essential rights and values of democracy and the rule of law. In practice, the progress of equality happens in small steps. At the moment, the global situation is not looking all that good. However, an acquaintance of mine, a historian, consoled me by saying that from a historical perspective a few years mean nothing, and the world is still developing for the better. I believe this to be true and want to work to maintain this direction. Human rights, non-discrimination and equality must be defended. We come back to why human rights agreements have been drafted. Because each and every human being is equally valuable and must therefore be treated equally.

Legislation creates the foundation for non-discrimination, but implementing it requires awareness of the rights, active promotion of equality, intervening in discrimination, and effective and proportionate sanctions. The objective is clear, but how do we reach it? Luckily, the Non-Discrimination Act has not imposed this task only on us supervisory authorities, but on all authorities, employers, education providers and educational institutions. In addition, numerous non-governmental organisations and representatives of civil society are working hard to promote equality among people. Furthermore, it does not harm business, either.

Although progress is made with small steps, each step is important. We have made our operating procedures easier to approach and striven for an efficient and flexible handling of matters. We have achieved results, for which I extend my gratitude to our entire office staff.

These accomplishments include, for example, that Romani mothers and their children receive an apology and compensation for discrimination they experience in a restaurant, that a little girl with a disability gets to attend a music class after all when a ride to school is organised, that an educational institution is convicted for discriminating against a sign-language using student by denying the student of their study right, that a Finnish member of the the LGBTI community gets to have their loved one permanently in Finland and they can get married, or that a perpetrator is convicted of human trafficking and the victim gains access to an assistance system and gets the help they need. These accomplishments may seem small in the universe, but their significance is massive to the individuals. Discrimination is a serious issue; it violates the human rights and should never be shrugged off or treated as overreacting.

I hope that this report will provide you with information on how these rights are realised in Finland, evoke thoughts and insights, and, above all, create a desire to work for equality and justice.

Wifan

Kirsi Pimiä

Non-Discrimination Ombudsman

1. Introduction

The Non-Discrimination Act entered into force in Finland in 2004. It provided the minimum protection against discrimination as required by the EU directives on removing racial discrimination and employment discrimination. Already when the Act was enacted, a reform process was initiated, and as a result, the current Non-Discrimination Act entered into force in the beginning of 2015. The Non-Discrimination Ombudsman, as an independent and autonomous authority, has worked with its current, extended mandate for three years. In addition to promoting equality and tackling discrimination, the Ombudsman monitors the realisation of the rights of minorities such as foreign nationals, acts as the National Rapporteur on Trafficking in Human Beings, and monitors the enforcement of removal from the country. The scope of operation is extensive. Common nominators for the different tasks are the monitoring and promotion of fundamental and human rights.

Under the Act on the Non-Discrimination Ombudsman, the Ombudsman will provide the Parliament with a report on the realisation of equality once every four years. The report will also deal with human trafficking and related issues. This Non-Discrimination Ombudsman's first report to the Parliament will handle all aspects of the Ombudsman's operation and authority – equality, discrimination, enforcement of the rights of foreign nationals, action against human trafficking, and monitoring the enforcement of removal from the country. The Act has been in force for three years, and now is a good time to evaluate its effectiveness. The parliamentary elections take place in one year. The observations and suggestions presented in the report provide the parliamentary groups and parties with an opportunity to evaluate the effectiveness of the non-discrimination legislation and other legislation related to the Ombudsman's scope of operation with a view to the next government term. Due to the extensive scope of operation, the Ombudsman monitors different social developments and the resulting discussion, which are described in this introduction. Chapter two describes the Ombudsman's efforts to tackle discrimination and to promote equality. We have attempted not to make this report simply a list-like review of the grounds for discrimination or of discrimination taking place in different areas of life. Instead, we highlight examples that describe the different dimensions of the non-discrimination legislation and the Ombudsman's authority in relation to these.

Enforcing the status and rights of foreign nationals in Finland is a broad entity, which is discussed in chapter three. A study conducted by the Non-Discrimination Ombudsman, the Faculty of Law of the University of Turku and the Institute for Human Rights at Åbo Akademi University on the decisions of the Finnish Immigration Service concerning international protection in 2015–2017 was published in March 2018. The findings and conclusions of the study are discussed in chapter three. In addition, the chapter highlights observations regarding the enforcement of the rights of foreign nationals in Finland. The observations are based on contacts received by the Non-Discrimination Ombudsman. The supervision of the enforcement of removal from the country is now described for the first time in a report submitted to the Parliament. The report presents the monitors' observations and experiences from the four years that the Ombudsman has monitored removals from the country. The purpose of the supervision is to ensure that the rights of the persons removed from the country are respected during the return process.

The Ombudsman's findings on human trafficking and action against human trafficking are discussed in chapter four. The Non-Discrimination Ombudsman received funding from the Finnish Government's strategic research funds to find out how authorities apply the provisions of legislation concerning assistance for victims of human trafficking, and how the right of victims of human trafficking to receive assistance and protection is enforced. The results of the project are published in a separate report. The central conclusions of the project and recommendations made on these bases are presented in chapter four. The project was carried out together with the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). In addition to the conclusions of the project, this chapter deals with the coordination of action against human trafficking, as well as with the Aliens Act and its application on victims of human trafficking.

The report is concluded with a summary of the conclusions and recommendations submitted to the Parliament. The Non-Discrimination Ombudsman's opinions elsewhere in the text are in italics. The electronic version of the report contains links to the electronically accessible studies and other possible background material.

1.1. THE SIGNIFICANCE OF HUMAN RIGHTS IS EMPHASISED IN DIFFICULT TIMES

The Universal Declaration of Human Rights of the UN was adopted exactly 70 years ago, and it was followed by the first international human rights conventions. The declaration was adopted soon after the Second World War and the Holocaust, and it was based on the need to protect individuals against the arbitrariness of state authorities. Every individual has the right to enjoy human rights. They were not created to apply only to a certain group or the representatives of a certain nationality. National legislation must not contradict the international conventions adopted by the state. The enforcement of fundamental and human rights requires continuous work to ensure that the human rights guaranteed in the conventions are also realised in practice.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948

ARTICLE 1:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Fundamental and human rights and equality are not matters of opinion, nor are they meant only for the good days. The significance of these issues is highlighted in socially challenging situations. The fundamental and human rights guarantee protection for all, and the most disadvantaged people in a society are the ones who need that protection the most. Some are more vulnerable to discrimination and exploitation than others due to their personal features; these include, for example, persons with disabilities, members of sexual or gender minorities, or persons without a residence permit. A person becomes particularly vulnerable if they have several disadvantages.

The recent political changes – the rise of populism and nationalism, both internationally and in Finland – have hardened attitudes, changed politics towards closing borders, and increased partially artificial confrontations. From a human rights perspective, the social situation in Finland has become more challenging. This is visible as prejudice, discrimination and hate speech. The fundamental and human rights have been questioned even in Finland. Criticism has been directed towards the UN refugee convention, the European Convention on Human Rights, the right to use one's native language, and the Sámi people's indigenous status, for example.

1.2. PROGRESS TOWARDS FULL ENFORCEMENT OF HUMAN RIGHTS

A lot of work has been done in Finland during the recent years to promote human rights and equality, despite the challenging social situation. The reform of non-discrimination and equality legislation that entered into force in 2015 improved the legal protection of individuals significantly. The reform strengthened the Non-Discrimination Ombudsman's status as a low-threshold legal remedy, and significantly extended the right to complain on different grounds. With the implementation of equality plans, the effects of the reform are slowly becoming visible in both the public and the private sector. Legal protection is enhanced further when case law in the National Non-Discrimination and Equality Tribunal and national courts provides more data on the interpretation of the law.

The UN Convention on the Rights of Persons with Disabilities was finally ratified in Finland in 2016. As a precondition, many legislative amendments were carried out, and the Parliamentary Ombudsman of Finland, the Human Rights Centre and its Human Rights Delegation were appointed as the structure in charge of the national implementation. The legal status of persons with disabilities was also improved by the reform of the Non-Discrimination Act, as a complaint of discrimination based on a disability can now be submitted to both the Non-Discrimination Ombudsman and the Non-Discrimination and Equality Tribunal.

The status of LGBTI people has been discussed actively during recent years. The entry into force of the reform of the Marriage Act in the spring of 2017 and the passing of the Maternity Act in Parliament in February 2018 have been great and justified results of extensive work. Good practices are seen in youth work: one example are the facilities and events designated especially to LGBTI youth, with the purpose of promoting their growth and providing them with a safe space to be themselves. Pride Parades gather more and more participants each year and spread to new cities. At the moment, it can be considered that the biggest problem is the Trans Act which violates the human rights of persons wishing to undergo legal gender recognition, but which the current Government is reluctant to revise.

Action against human trafficking has developed in a positive direction after the previous report of the National Rapporteur on Trafficking in Human Beings was submitted to the Parliament. Victims of human trafficking are identified more often, and the prosecution of persons guilty of human trafficking is enforced more efficiently. The provisions of the Criminal Code concerning human trafficking were updated in 2015 to better suit the obligations that bind Finland under international and EU legislation, which resulted in that, instead of physical violence and deprivation of liberty, the provisions now emphasise psychological violence and pressuring that are typical for human trafficking. Legal amendments concerning assistance for victims of human trafficking entered into force that same year, with the purpose of clarifying the distribution of responsibilities between authorities and guaranteeing all victims of human trafficking an equal right to assistance. Action against human trafficking benefits from continuous evaluation and from submitting analysed data to decision makers and making independent suggestions for measures to develop the action against human trafficking.

Active citizenship seems to have become topical in the recent years, and for example citizens' initiatives have become very popular. Non-governmental organisations have been a major driving force in, for example, improving the status of LGBTI people and persons with disabilities. In addition to long-term organisational work, there have emerged networks that act quickly and lightly for a certain cause. The citizens' initiatives on marriage equality, on putting an end to tendering for necessary services for people with disabilities, and on the enactment of a maternity act are excellent examples of activism. The citizens' activity matters.

Activism was also visible when volunteer support staff assisted in many different ways in the reception of asylum seekers in the autumn of 2015. Many volunteers have stayed by the asylum seekers' side throughout the entire long process. For some, the process has ended with the granting of a residence permit and for others with voluntary repatriation, whereas others are still awaiting the enforcement of deportation. Opposing and raising awareness of so-called forced returns has increased considerably in 2017. Reactions to the returns have been a protest against Finland's asylum policy that some deem to be unjust. Activism can be harnessed to highlight problems quickly and efficiently.

Discrimination is often based on ignorance, and intervening in discrimination requires awareness of one's own rights. The curricula of schools were complemented in 2016 with democracy and human rights education, which is aimed at providing children and the youth with better capabilities to understand the society and the significance of human rights, and to grow up to be involved citizens. The Finnish National Agency for Education issued in 2016 for the first time a National Core Curriculum for Early Childhood Education and Care, which is binding on all organisers of early childhood education. The curriculum emphasises non-discrimination and equality as well as human rights as values that steer and bind early childhood education.

1.3. RACISM

Racism is a problem also in Finland. The extent of the problem is best understood by a person with first-hand experience of racism. The volume of racism is also reflected in several studies, contacts received by the Non-Discrimination Ombudsman, and the hate crime statistics of the police. Racism is often masked as criticism against immigration, but it may still be motivated by prejudice related to skin colour, name or religion. Racism may emerge as hate speech, discrimination, violence or seemingly neutral practices, which, in reality, exclude a part of the population.

In Finland, a debate on racialisation and its meaning has started to evolve. Racialisation means that, due to appearance or ethnic background, a certain group and persons categorised as belonging to that group are related with other features that are deemed characteristic and permanent. The racialisation debate has underlined the frequency of experiences of racism. The society grows stronger, when the image of Finland and Finns becomes more versatile.

Negative attitudes are also present in the approach to national linguistic minorities, such as the Finnish-Swedish population, the Sámi and the Roma. The status of Swedish as the second national language is challenged more strongly than before, and the Finnish-Swedish population faces actual harassment. The constitutional status of the Sámi as an indigenous people and the related rights have been questioned by decision makers,

as well. Measures have been taken to revive the Sámi languages, but at the same time the Sámi people's right to be heard in decisions that affect them has been enforced inadequately. Prejudices against the Roma people are typically visible as discriminatory treatment in stores and restaurants, for example.

As the atmosphere becomes more harsh and the discussion becomes increasingly polarised, hate speech has become more visible. The increase in the number of asylum seekers in 2015 brought out not only people's willingness to help, but also various kinds of overreacting, such as hate speech. At worst, persons and reception centres were subjected also to concrete attacks. Racist and sexist hate speech was directed not only at asylum seekers, but also at the people helping them. At the same time, numerous persons and non-governmental organisations have actively participated in various anti-racism campaigns and protests.

We must invest in efficient enforcement of legislation in our society: defamations and ethnic agitation motivated by hatred must be investigated, and the perpetrators must be prosecuted efficiently. The prohibition of harassment included in the Non-Discrimination Act must also be utilised more efficiently as a tool for combating hate speech. The police and prosecutors play a significant part in demonstrating that threats, insults and other hate crimes made with discriminatory motives are serious crimes. The police were assigned a significant amount of additional resources in 2017 for action against hate speech, and there have been more criminal investigations concerning ethnic agitation than before.

Even in Finland, the idea sometimes appears in the public debate that, based on the freedom of speech, it would be acceptable to say anything, no matter how insulting or racist it is. Freedom of speech does not entitle anyone to violate a person's dignity. Political decision-makers and other persons in visible position must also acknowledge the impact that their words and claims have on public attitudes.

1.4. VULNERABILITY IS CREATED AND PREVENTED WITH STRUCTURES

People have a natural, inherent need to belong in a group. The experience of inclusion and of a possibility to exert influence prevents social exclusion, as is underlined by the [National Institute for Health and Welfare \(THL\)](#). Professor Juho Saari emphasises that loneliness is one of the core reasons behind many other problems. It is precisely the people in vulnerable positions who have the deepest experiences of loneliness. Social inclusion is promoted by the acknowledgement of human diversity and different needs in the construction of society and in political decision-making.

The long economic downturn that has tormented Finland, along with the social atmosphere that has become polarised during the recent years, has given rise to fears of deteriorating equality. There are population groups in Finland, whose full access to their own rights has been jeopardised. When analysed on a general level, the welfare state is functioning well, but it must also carry the most vulnerable people with the weakest abilities and possibilities to enforce their own rights. Fundamental and human rights must not be priced according to the prevailing economic situation or the current Government's political orientations.

In many situations, individuals are demanded to take responsibility for their own choices and welfare. A more extensive examination may reveal a structural problem. A single legislative amendment may be completely justified, but the combined effect of several decisions or legislative amendments may lead to problematic situations.

Non-discrimination is often discussed in relation to the health and social services reform. It is desirable that equality does not get buried under the other objectives of the reform, and that the vulnerable customers' right to a cohesive and high-quality social welfare and health care service package is not jeopardised. This risk concerns especially persons in need of many services, the elderly, victims of human trafficking, persons with disabilities, and members of linguistic or other minorities.

Responsibility for the employment of young Roma people can easily be placed on the young people themselves in public debate, even though the situation of the young Roma in the labour market may be weakened, despite their

competence level, by discriminatory attitudes. Positive action is a concrete way of promoting the employment of members of groups in a weaker labour market position. Anonymous recruiting is one option for ensuring that presumptions concerning a person's background do not influence the recruitment decisions. Measures such as these create structures that promote equality and prevent discrimination.

The issue of corporate social responsibility is discussed increasingly. The debate often raises issues related to the environment or subcontracting chains. Acknowledging the genuine diversity in people as consumers and employees can also be seen as a part of this social responsibility. Equality planning that concerns the company's operation is one way of doing so.

This government term has brought numerous changes to the international protection process of asylum seekers. Access to legal assistance has been restricted, remuneration criteria and the fees of interpretation expenses have been changed, and appeal periods have been cut. The combined legislative amendments have reduced the use of counsel during the asylum seeking process, for example in asylum interviews, and, for their part, hindered the enforcement of a high-quality administrative process. Restrictions on reception services have created a new group of undocumented persons. Services have been made inaccessible for persons who are awaiting a decision from the highest appeal authority and persons who in reality cannot be returned, despite a negative asylum decision. The situations of these persons vary, but many of them are in a vulnerable position and susceptible to different forms of exploitation.

Indications of occupational exploitation and human trafficking have increased constantly during the last two years. The increasing number of people vulnerable to exploitation can be deemed to constitute one reason for this trend, as it provides exploiters with an easy access to cheap or free labour force. The effective prevention of human trafficking requires intervening in the structures and working in close co-operation with all the related stakeholders.

Safeguarding the rights of persons in a vulnerable position, seeing diversity as an asset, and promoting a society in which everyone can participate form the best foun-

dation for a prosperous and strong Finland. Intervening in structural issues requires will and more extensive examination of matters from the political decision makers. The acknowledgement of fundamental and human rights in the drafting of legislation, as well as an interpretation of the law that favours fundamental and human rights, are significant factors that contribute to the enforcement of equality and fundamental and human rights in general.

1.5. THE NON-DISCRIMINATION OMBUDSMAN'S OFFICE

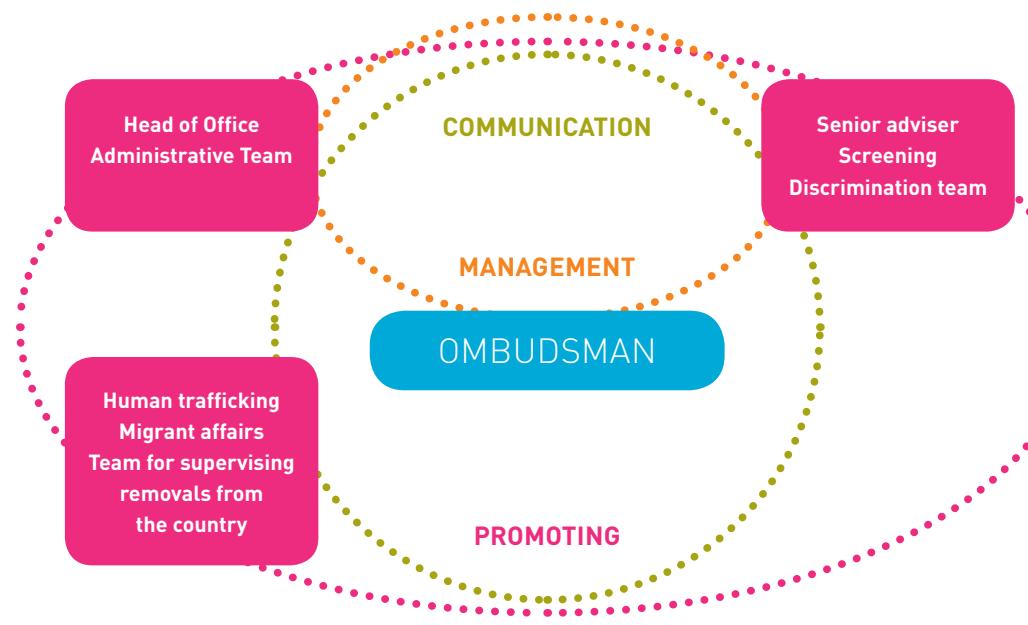
The social situation and atmosphere have an impact also on the Non-Discrimination Ombudsman's work. According to the operational strategy of the Ombudsman, the most essential social objective of the Ombudsman's work is enforcing equality in Finland better than before. There is plenty of work to be done to promote equal treatment and the enforcement of the rights of foreign nationals and victims of human trafficking. The Ombudsman's vast mandate, as well as the limited resources, force the Ombudsman to prioritise and restrict its operation. As a result, the Ombudsman chooses themes for each year, to which it then pays particular attention and allocates resources.

Under the Non-Discrimination Act, authorities, educational institutions, and employers alike are obligated to promote equality. Equality is promoted efficiently through co-operation. The promotion of equality in the society requires close co-operation and networking among political decision makers, authorities, corporations and the civil society alike. The media plays an important role as a mediator of information in the work for promoting equality.

The Non-Discrimination Ombudsman's extensive mandate requires the office personnel to possess comprehensive knowledge and skills to handle an increasing number of contacts and challenging legal issues. It is ensured at the office that the employees have adequate knowledge of the different operational sectors and the different grounds for discrimination.

During the past three years, the services and operating methods of the office have been made easier to approach, more accessible and more customer-friendly, so that

ORGANISATION OF THE NON-DISCRIMINATION OMBUDSMAN'S OFFICE



the Ombudsman can be seen as a reliable and credible low-threshold legal remedy. Resources are allocated in a way that ensures efficient and flexible handling of matters.

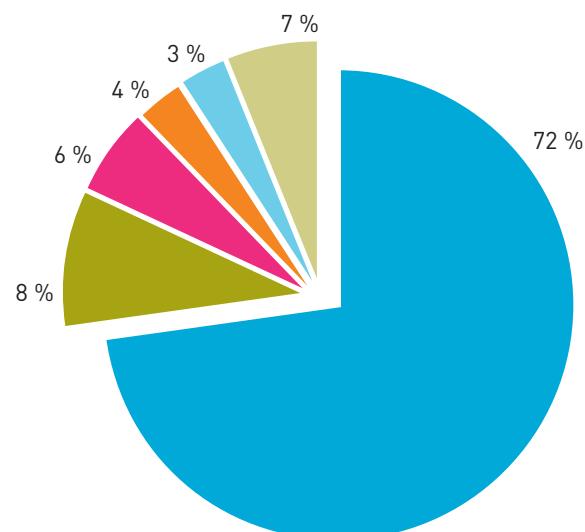
The Non-Discrimination Ombudsman's office has 16 permanent tenures. Since 2015, the office has employed two to five additional staff members on different project funding schemes. At the moment, there are 21 persons working at the office. The staff is divided into teams that focus on discrimination, administration, communication, foreign nationals, human trafficking and removal from the country. Although the Ombudsman was assigned five new tenures in the reform of the Non-Discrimination Act, human resources and the operational appropriation are still extremely limited (approx. EUR 1.5 million/year). The low level of the annual operational appropriation (150,000 €) in particular restricts the Ombudsman's possibilities of planning and executing more extensive

and socially effective projects with the purpose of promoting equality in different areas of life.

The Ombudsman's broadest operating area (promoting equality and tackling discrimination) occupies at the moment half of the permanent tenures (8 person-years). The number of contacts concerning discrimination has quadrupled in three years. Consequently, the Ombudsman must be even more careful in assessing how to handle the contacts and which ones should be investigated more thoroughly. An individual customer may find this prioritisation unjust, but otherwise the processing times would grow significantly longer and many important matters could only be given a more cursory examination. This would challenge the Ombudsman's status as an efficient low-threshold legal remedy. It is obvious that the Ombudsman will not be able to carry out its statutory task as efficiently and with as high level of quality.

CONTACT TYPES PROCESSED BY THE NON-DISCRIMINATION OMBUDSMAN IN 2017

- Discrimination (1107 pcs)
 - General request for information (128)
 - Status and rights of foreign nationals (95)
 - Not within the Ombudsman's competence (52)
 - Promoting equality (50)
 - Other (100)



ty as currently, if the number of contacts continues to increase this strongly and the resources remain at the current level.

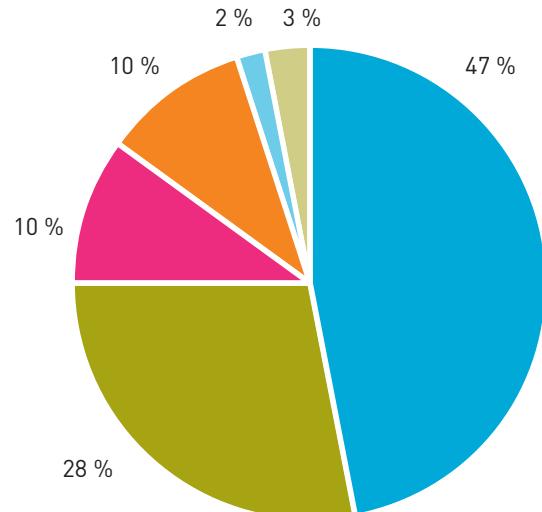
Different Parliamentary Committees have also expressed in their Budget statements their concern regarding the inadequate resources available for the task of the National Rapporteur on Trafficking in Human Beings and for the supervision of the enforcement of removal from the country. The Ombudsman's office has one permanent tenure designated for performing the task of the National Rapporteur on Trafficking in Human Beings. During the past couple of years, project funding has made it possible to allocate an additional ½–1 person-years to this task. The remit of the National Rapporteur on Trafficking in Human Beings is extremely wide-ranging. The improved identification of human trafficking and the development of action against human trafficking are witnessed in the Ombudsman's office as a distinct increase in contacts from customers and authorities. The strengthening of competence requires continuous training and counselling, which as such could take up the contribution of one person at the Ombudsman's office. As the work load increases, the current human resources will not be enough to meet the information and support-related needs of parties working to combat human trafficking, especially as the Ombudsman wants to ensure thorough analysis and research work, as well. Targeted information is needed to support decision-making and to develop the structures and legislation concerning action against human trafficking. The project behind this report was also funded from the Finnish Government's analysis and research appropriations (TEAS).

Since the beginning of 2014, the Ombudsman has monitored the enforcement of removal from the country without permanent resources. The task was initially performed with EU project funding. For the year 2017, the Ombudsman received budget funding for one fixed-term tenure, and for 2018, funding was given for three fixed-term tenures. The Parliamentary Finance Committee agreed in its report [VaVM 22/2017 vp] with the Ombudsman's opinion, according to which adequate, permanent resources must be allocated for performing statutory tasks, and these resources shall be included in the plan for public finances in the spring of 2018.

The core of the Non-Discrimination Ombudsman's task consists of evaluating and ensuring that the rights of persons and the legal protection of individuals are enforced as equally as possible. It may be a question of a Roma family being treated in a discriminatory manner in the rental market, an asylum seeker being separated from their family for no reason, a victim of human trafficking not receiving health services to which they are entitled, or a person to be removed from the country not being allowed to contact their assistant. The Ombudsman supervises how authorities and private operators comply with their statutory obligations. From the perspective of results, it is reasonable to invest in preventive action. Discrimination and other infringements can be prevented with counselling, training and communication. The resources allocated to the Non-Discrimination Ombudsman's work can be regained many times over when we can avoid these often serious infringements and their costs to both the public and private sector.

HANDLING OF CASES PROCESSED BY THE NON-DISCRIMINATION OMBUDSMAN IN 2017: HOW THE HANDLING OF THE MATTER WAS COMPLETED

- Guidance
 - Screening
 - No measures
 - Reply from the presenting official
 - Non-Discrimination Ombudsman transfers/brings to another authority
 - Statement/opinion of the Ombudsman



2. Equality brings legal protection to all

The Non-Discrimination Ombudsman is an autonomous and independent authority, whose key task consists of promoting equality and tackling discrimination. The Ombudsman receives contacts regarding experienced or observed discrimination with a wide variety of grounds for discrimination and from all areas of life. The number of contacts has increased significantly each year.

Legislation concerning non-discrimination provides various measures for combating discrimination and promoting equality. The Non-Discrimination Ombudsman can intervene in discrimination experienced by individuals at a low threshold and promote equality in a less drastic way in comparison to a legal process.

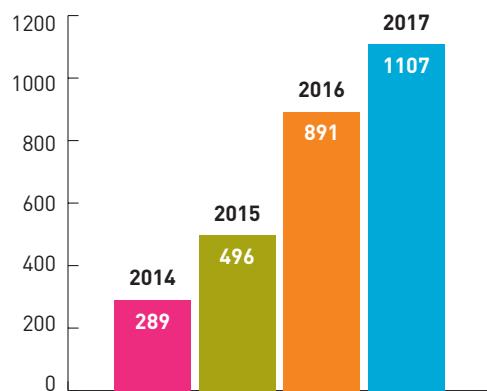
This chapter examines the Non-Discrimination Ombudsman's operating methods applied to tackling discrimination and promoting equality. The chapter also presents other legal remedies provided for in the non-discrimination legislation, such as the National Non-Discrimination and Equality Tribunal. In addition, the chapter describes discrimination observed in different areas of life, and presents the obligations for promoting equality and their enforcement. Promoting the rights and equality of persons with disabilities has been the operational focal point of the Ombudsman's office in 2016 and 2017. Separate sub-chapters are dedicated to issues related to disability and the Non-Discrimination Ombudsman's role in cases of employment discrimination, and the need to develop legal protection in this respect.

The final part of the chapter evaluates the efficiency of the current Non-Discrimination Act and raises development needs in legislation, as well as gives recommendations for measures with which equality could be promoted and discrimination tackled even more efficiently and the legal protection of individuals could be enhanced. Based on the practical experiences gained under three years, the Non-Discrimination Ombudsman recommends the Non-Discrimination Act to be developed further.

GROUND FOR DISCRIMINATION UNDER THE NON-DISCRIMINATION ACT



INCREASE IN THE NUMBER OF DISCRIMINATION CONTACTS HANDLED BY THE OMBUDSMAN IN 2014–2017



2.1 NON-DISCRIMINATION ACT PROVIDES LOW-THRESHOLD MEASURES FOR COMBATING DISCRIMINATION

For decades, the non-discrimination provisions of the Constitution of Finland have been supplemented with special legislation and special authorities. The most long-term measures promoting support and legal protection have been the Equality Act and the Ombudsman for Equality, who has worked with discrimination based on gender since the 1980s. Adopted in the European Union in 2002, the Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ([2000/43/EC](#), later referred to as the Anti-racism Directive) requires the member states to prohibit and combat ethnic discrimination in the labour market, the field of education and access to goods and services. Adopted at the same time, the Council Directive establishing a general framework for equal treatment in employment and occupation ([2000/78/EC](#), later referred to as the Employment Equality Directive) prohibits discrimination in the labour market on the basis of age, disability, sexual orientation and religion or belief. The Non-Discrimination Act that entered into force in 2004 was based on the legislation to ban ethnic discrimination and occupational discrimination, required under the European Union Directives.

During the implementation of the Directives banning discrimination, several EU member states decided to provide individuals with more extensive protection against discrimination than what was required in the Directives. It was the wish of many parties providing statements, including non-governmental organisations, that for example in the provision of goods and services, the prohibition of discrimination would extend also to discrimination based on disability or sexual orientation, for example. Another expressed wish was that the authorities established to monitor the Non-Discrimination Act, the Ombudsman for Minorities and the National Discrimination Tribunal could provide assistance to victims of discrimination beyond the ethnic minorities, and that these authorities would also have the competence to intervene in occupational discrimination. However, in the early 2000s, Finland settled for providing a level of protection close to the minimum level laid down in the Directive. Already in 2003, the Parliament passed a resolution requiring the Government to reform the non-discrimination legislation by broadening the scope of legal protection provided for

individuals. This initiated a process that led to the entry into force of the current non-discrimination legislation in early 2015.

2.1.1. PROHIBITION OF DISCRIMINATION IN THE NON-DISCRIMINATION ACT AND THE CRIMINAL CODE

The central purpose of the prohibition of discrimination and of the non-discrimination legislation is to safeguard the rights of individuals. The key objective of the Non-Discrimination Act of 2015 was to broaden the scope of legal protection, so that the prohibition of discrimination applies to all private and public activities. Only engaging in religious practices and private activities belonging in the area of family life were excluded from the scope of application. Another essential objective was ensuring that the prohibition of discrimination and the requirement of promoting equality apply to all characteristics related to an individual. For this purpose, the list concerning the prohibition of discrimination was extended beyond the grounds provided in the Directives [age, disability, ethnic origin, sexual orientation and religion or belief] to include also nationality, language, state of health, family relationships, opinion, political activity, trade union activity, and the concept of 'other personal characteristics', which was added to complement the list concerning the prohibition of discrimination. Most of the other member states of the European Union have adopted a more extensive prohibition of discrimination than what is required in the Directives.

The former title of the Ombudsman for Minorities was changed to Non-Discrimination Ombudsman. At the same time, the Non-Discrimination Ombudsman's mandate was extended in a way that allows the Ombudsman to assess discrimination and tackle violations of equality on all the grounds for discrimination prohibited in the legislation. Although the Non-Discrimination Ombudsman's role as the promoter of equality in the labour market was emphasised, neither the Ombudsman nor the National Non-Discrimination and Equality Tribunal were given a statutory possibility for expressing an opinion on individual cases of employment discrimination.

The Non-Discrimination Ombudsman's authority touches on the jurisdiction of other authorities in many areas. With regard to education and early childhood education and care, for example, it must often be determined

whether a complaint should be submitted to the Ombudsman or to the Regional State Administrative Agency. For the part of authorities' activities and the rest of the public sector, the Ombudsman's remit coincides also with the jurisdiction of the Parliamentary Ombudsman and the Chancellor of Justice. The Non-Discrimination Ombudsman collaborates with different authorities to discover the most appropriate operating methods.

In addition to the Non-Discrimination Act, discrimination is also prohibited under the Criminal Code of Finland. In comparison to the Criminal Code, the Non-Discrimination Act – like the Equality Act – facilitates the proving of discrimination by distributing the burden of proof in demonstrating discrimination. The Non-Discrimination Act states that if such facts are provided concerning discrimination that give cause to believe that discrimination has occurred, the person suspected of discrimination must prove that no discriminatory action has taken place. The party suspected of discrimination must rebut the assumption by, for example, demonstrating that there has been an objective acceptable under the Non-Discrimination Act behind the activities, and that the chosen measures have been reasonable and proportionate. In the Criminal Code, the rights of a victim are dependent on whether the prosecutor can prove that discrimination has occurred. Under the Non-Discrimination Act it is also possible to receive compensation for discrimination without an obligation to prove that the discrimination has caused suffering.

The prohibition of discrimination is more peremptory in the Non-Discrimination Act than in the Criminal Code. The Non-Discrimination Act defines situations that justify different treatment in more detail than the Criminal Code, which simply states that different treatment is possible if there is an “acceptable reason” for it. However, in a decision issued after the enactment of the Non-Discrimination Act, the Supreme Court has stated that the Constitutional principle of equal treatment should not, without a weighty reason, be interpreted differently in the different branches of law.

The Supreme Court [KKO:2015:41]: "The purpose of the prohibition of discrimination in employment, enforced in chapter 47, section 3 of the Criminal Code with the imposition of a conditional penalty, is related to the principle of equal treatment provided in section 6(2) of the

Constitution of Finland. Due to the essential significance of this principle, without weighty reasons, there are no grounds for interpreting the prohibition of discrimination differently in different areas of the legal order. One example of such justified reasons would be the objective of making the criminal scope of discrimination more restricted than the provisions of the Non-Discrimination Act. In the case of discrimination based on family relationships, such purpose is not found in the preparatory legislative work. Consequently, the Supreme Court finds that in the application of the grounds for discrimination concerning family relationships, as referred to in chapter 47, section 3 of the Criminal Code, examination given to the relevant grounds for discrimination elsewhere in legislation can be taken into consideration in the interpretation of the criteria. However, the principle of legality in criminal justice requires, as previously stated in section 10, that the provisions must not be interpreted in a way that is alien to their purpose and may lead to unforeseen results.”

2.1.2. NATIONAL NON-DISCRIMINATION AND EQUALITY TRIBUNAL



The legal protection of individuals has been strengthened in the non-discrimination legislation by emphasising low-threshold legal remedies, one of which is the National Non-Discrimination and Equality Tribunal. The Tribunal is an impartial and independent judicial body appointed by the Government. The decisions of the Tribunal are legally binding. The Tribunal supervises compliance with the Non-Discrimination Act and the Equality Act both in private activities and in public administrative and commercial activities.

Victims of discrimination can submit their cause to the National Non-Discrimination and Equality Tribunal themselves, which is a significant feature from an individual's viewpoint. In addition to the injured party, the

Non-Discrimination Ombudsman or a community promoting equality may take a matter to the Tribunal with the injured party's consent. However, under the Equality Act, victims of gender-based discrimination cannot take their cause to the Tribunal themselves. This matter is discussed in the working group appointed to amend the Equality Act.

The Tribunal may prohibit continued or repeated discrimination or victimisation and impose a conditional fine to enforce compliance with its injunctions. The Tribunal may oblige the party concerned to take measures within a reasonable period of time in order to fulfil the obligations under the Non-Discrimination Act. The Tribunal may not order any compensation to be paid. A decision issued by the Tribunal may be appealed to the competent Administrative Court. (www.yvtltk.fi)

The number of cases brought to the National Non-Discrimination and Equality Tribunal has increased each year. The Non-Discrimination Ombudsman has submitted five cases to the National Non-Discrimination and Equality Tribunal.

The services of the National Non-Discrimination and Equality Tribunal are free of charge and easily accessible. In its decisions, the Tribunal has, among other issues, outlined the reasonable accommodations concerning persons with disabilities in a way that is favourable to human rights. The threshold for seeking assistance from a low-threshold redress body may, however, be elevated by requests for additional statements and prolonged processing times. For an individual, a processing time of one year or more is long, especially if it is followed by an appeal to the Administrative Court.

2.2. TACKLING DISCRIMINATION AND PROMOTING EQUALITY

The expansion of the Non-Discrimination Ombudsman's and the National Non-Discrimination and Equality Tribunal's tasks to comprise all grounds for discrimination referred to in the Non-Discrimination Act has exposed many types of discrimination. The Non-Discrimination Act provides the Ombudsman with various operating methods with which to tackle discrimination and promote equality, in individual cases and beyond. The Ombudsman promotes equality through co-operation with interest groups and advocacy work for example, and encourages different operators to utilise equality planning.

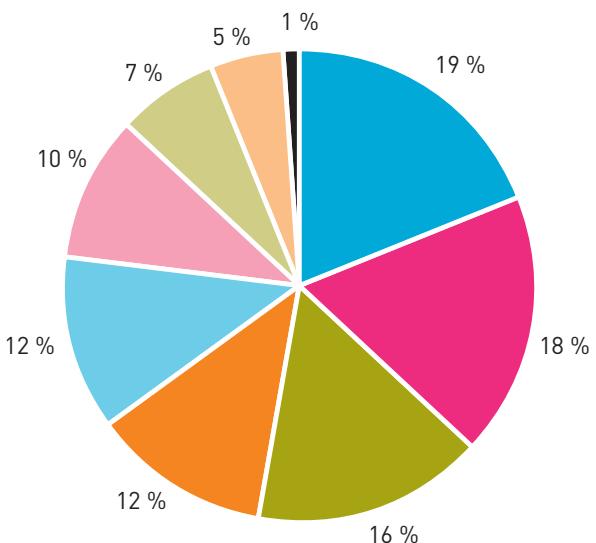
The promotion of equality prevents discrimination and increases people's awareness of the prohibition of discrimination. Equality plans, which under the current legislation must be more comprehensive and are required of more operators than previously, were set to be completed in the beginning of year 2017. The Ombudsman has started the supervision of equality plans included in its competence officially in 2018

2.2.1. OPERATING PROCEDURES OF THE NON-DISCRIMINATION OMBUDSMAN

The Non-Discrimination Ombudsman processes contacts concerning discrimination based on all grounds for discrimination provided in the Non-Discrimination Act. The Ombudsman's work is organised according to different areas of life. At the same time, expertise concerning the different grounds for discrimination has been strengthened. The Ombudsman can be contacted by telephone, letter or e-mail or by filling out an online form. In addition, the Ombudsman has started an

CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN ACCORDING TO THE DIFFERENT AREAS OF LIFE IN 2017

- Other public services (19 %)
 - Other private services (18 %)
 - Employment (16 %)
 - Social welfare and healthcare services (12 %)
 - Education/training (12 %)
 - Housing (10 %)
 - Other (7 %)
 - Leisure time/association activities (5 %)
 - Private and family life (1 %)



online chat service, which offers counselling and replies to information requests.

Intervening in discrimination. When the Non-Discrimination Ombudsman receives a complaint concerning discrimination, she first assesses whether the case gives rise to a presumption of discrimination, id est is it a case of discrimination in breach of the Non-Discrimination Act. According to the Non-Discrimination Act, reversed burden of proof is applied to demonstrating discrimination. If the situation gives rise to a presumption of discrimination, the party suspected of discrimination must rebut the presumption. If different treatment has not been based on an objective that is acceptable under the Non-Discrimination Act, and the chosen measures have not been reasonable and proportionate, this constitutes a case of direct discrimination. In turn, it is a case of indirect discrimination, if an ostensibly equal regulation, justification or practice places a person in an unfavourable position, except if the action is based on an acceptable objective and the measures are appropriate and necessary. The definition of discrimination also includes an instruction or order to discriminate against someone, harassment, and denying a person with disabilities of reasonable accommodations.

The Non-Discrimination Ombudsman has the power of discretion in deciding, which complaints are processed further and how. Chapter 2 of the Administrative Procedure Act (368/2014) concerning the foundations of good administration and chapter 8a on the processing of administrative complaints of the same Act are applied to the operation of the Non-Discrimination Ombudsman, as are other provisions of the same Act, as applicable. Under section 53b of the Administrative Procedure Act, the Ombudsman is obliged to take measures she considers appropriate based on the complaint. Therefore, the Ombudsman has wide discretionary powers in deciding, what measures shall be taken on the basis of an individual complaint. The Ombudsman replies to all discrimination notices received in writing. Not all complaints are investigated, but if the complaint gives cause to suspect that the actions of an authority or other operator have been in violation of the Non-Discrimination Act, the Ombudsman generally begins investigations on the matter. When contemplating the measures to be taken and assessing which authority possesses primary jurisdiction in the matter, the Ombudsman considers, among other things, the individuals' access to their rights in the most efficient and appropriate manner, and the possible wider societal significance of the processed case.



The operating procedures of the Non-Discrimination Ombudsman include, among others, expressing an opinion on discrimination, promoting conciliation between parties, taking the matter to the Non-Discrimination and Equality Tribunal for resolving, and assisting victims of discrimination in court. In the easiest scenario, the situation can be resolved by telephone or e-mail. The Ombudsman takes action especially in matters that are significant in terms of principle, and in cases where the action of the Ombudsman may have essential significance for the end result.

Promoting conciliation. Under the Non-Discrimination Act, the Ombudsman can promote conciliation in a matter regarding discrimination. If the Non-Discrimination Ombudsman is to take on the promotion of conciliation, the matter must be uncontested in terms of the action in breach of the Non-Discrimination Act. In general, reconciliation agreements prepared by the Ombudsman include an apology from the party admitting to discrimination, and proportionate compensation evaluated on a case-by-case basis under the Non-Discrimination Act. In the agreement, the party admitting to discrimination is generally required to commit to discontinuing the procedures that have led to the discriminatory event and to implement different promotive measures, such as preparing instructions for employees to raise awareness of equality and the prohibition of discrimination. Thus, the Non-Discrimination Ombudsman also takes into account a more general dimension of preventing discrimination in the promotion of conciliation. The reconciliation agreements drafted by the Ombudsman are primarily public.

Hearing of the Ombudsman. In legal issues concerning the application of the Non-Discrimination Act, the Ombudsman must be reserved an opportunity to be heard under section 27 of the Non-Discrimination Act. These statements are often related to the interpretation of the non-discrimination legislation. The Ombudsman has also used her right to issue a statement in legal cases, where the aim has been to promote equality on a more extensive scale, in addition to the individual case. In her statements submitted to courts and prosecutors, the Non-Discrimination Ombudsman has also paid attention to the amount of compensation provided in the Non-Discrimination Act. The previous case law has not been efficient, proportionate and cautionary in terms of

implications. There is little established case law on the current Non-Discrimination Act, but expectations concerning effective implications are high.

Assisting a victim in court. At her own discretion, the Non-Discrimination Ombudsman can assist a victim of discrimination also in the legal proceedings. Acting as a legal counsel is exceptional and it is usually done only in matters that are significant in terms of principle. As a case in point, the Ombudsman's acted as legal counsel for a pacifist conscientious objector in the criminal proceedings in the Helsinki Court of Appeal in May 2017. The Ombudsman took on the matter because despite numerous notices from the Constitutional Law Committee and the UN Human Rights Committee, the Finnish Governments had not initiated preparatory work on a bill amending the existing discriminatory legislation. The Ombudsman also aims at altering the discriminatory legal situation in military and non-military service. Only members of the Jehovah's Witnesses are exempted from both military and non-military service under an exceptive act, whereas members of other religious groups and persons refusing service due to their belief are sentenced to imprisonment.

The Court of Appeal issued a significant policy decision [R 16/738] in the matter in February 2018, and threw out the charges raised against the conscientious objector for refusing non-military service. The Court of Appeal sentenced unanimously that there are no acceptable grounds under the Constitution for the different treatment of persons refusing service due to their religion or belief. The majority of the Court of Appeal (voting result 4-3) found that sentencing a conscientious objector to imprisonment would create a distinct contradiction to the principle of equal treatment and the prohibition of discrimination secured in section 6 of the Constitution, when the provisions are interpreted jointly with the human rights obligations that are binding on Finland. The requirement of equal treatment called for the equal treatment of different beliefs, and different treatment could not be deemed acceptable even on account of the fact that the exemptive law had been enacted as an exceptive act. This was the first time a national court has found an exceptive act unconstitutional. The prosecutor is likely to appeal the decision to the Supreme Court.

Opinion and inspection. The Non-Discrimination Ombudsman does not possess a legally binding power of decision. However, the Ombudsman's opinion or other manner of intervening in discrimination often contributes both to the cessation of discrimination and to the discriminating party's increased interest in implementing measures that promote equality. The Ombudsman has a broad right of access to information, which allows the Ombudsman, under threat of fine if necessary, to request a report of the events from the party suspected of discrimination. The measures available to the Non-Discrimination Ombudsman include carrying out inspections in the facilities of authorities, educational institutions and service providers, if such action is necessary to investigate a suspected case of discrimination, for example. By the end of the year 2017, the Ombudsman had carried out one inspection.

Monitoring equality planning. When processing complaints, the Non-Discrimination Ombudsman also pays attention to the obligations of promoting equality provided in the Non-Discrimination Act. For this reason, when the Ombudsman processes complaints, she regularly requests equality plans from parties under the obligation of promoting equality: authorities, educational institutions and education providers. The Non-Discrim-

THE NON-DISCRIMINATION OMBUDSMAN'S SPEECHES, TRAININGS, MEETINGS AND PARTICIPATION IN EVENTS IN 2017



Each year, the Ombudsman organises dozens of training events and holds speeches on, for example, equality planning and the obligations related to preventing and tackling discrimination.

ination Ombudsman also supervises the equality plans separately by requesting the equality plans in a targeted manner from a certain group of authorities or educational institutions. The equality plans of employers are monitored by the Occupational Safety and Health Authority.

Promoting equality. To promote equality and prevent discrimination, the Non-Discrimination Ombudsman by virtue of law prepares and commissions reviews, publishes reports and takes initiatives; provides counselling and statements; promotes information, education and training; participates in European and international co-operation, and, within her remit, monitors Finland's compliance with international human rights obligations and the effectiveness of national legislation. Under the Non-Discrimination Act, the Ombudsman also issues general recommendations to prevent discrimination and to promote equality.

The Ombudsman carries out these tasks versatility in different areas of life and with respect to different grounds for discrimination. The Ombudsman works in collaboration and accumulates her expertise by, for example, meeting non-governmental organisations and authorities, representatives of companies, and other central operators from different areas of life. To understand the mechanisms of discrimination and equality, it is of particular importance to hear the experiences of parties and persons representing the different grounds for discrimination.

Each year, the Ombudsman organises dozens of training events and gives speeches in various functions concerning, for example, equality planning and the obligations related to preventing and tackling discrimination.

The Non-Discrimination Ombudsman has various operating procedures to promote equality in a concrete manner. For example, in 2017 the Non-Discrimination Ombudsman promoted equality in a case where a certain parish refused to rent the congregation's facilities to same-sex couples for their wedding reception. As this was not a case of engaging in religious practices, but rather of the parish acting as a lessor of the facilities, the Non-Discrimination Act was applicable to the case. The Ombudsman was not aware of any individual person whom the discriminatory decision would have affected, so the Ombudsman could not, for example, bring the

matter to be handled by the National Non-Discrimination and Equality Tribunal. The Non-Discrimination Ombudsman started promoting equality in the case by conducting discussions with, among others, the parish and the Church Council. The goal is that parishes will treat all parties interested in renting their facilities equally. The Church Council requested a report on the matter from the Cathedral Chapters and issued a reminder that the Non-Discrimination Act is applicable to the renting of parish facilities.

Communication and exertion of influence. The Non-Discrimination Ombudsman carries out versatile and long-term influencing work as a specialist by, among other things, submitting statements for legislative drafting, commissioning reports, and utilising strategic communication. The Ombudsman distributes information of the application of the Non-Discrimination Act and comments on topical issues by giving expert interviews, publishing bulletins and blog posts, and being active in the social media. The significance of an individual case of discrimination grows beyond a certain organisation and the victim of discrimination, when general awareness of individuals' rights as well as of the prohibition of discrimination and the related sanctions increases. Visibility is essential, so that persons who have experienced or witnessed discrimination can contact the Ombudsman, and that awareness of the prohibition of discrimination and the obligations to promote equality is spread further.

The Ombudsman supports the development work carried out by different parties, such as other authorities. The Non-Discrimination Ombudsman participates, for example, in co-operation coordinated by the National Institute for Health and Welfare (THL) in spring 2018, aimed at more diverse utilisation of the results of the School Health Survey in schools and municipalities. The Non-Discrimination Ombudsman conducts discussions on topical issues when necessary with other supervisory authorities, such as the supreme overseers of legality, the Regional State Administrative Agencies, and the National Supervisory Authority for Welfare and Health (Valvira).

The Non-Discrimination Ombudsman distributes information regarding her work, and equality and discrimination in general, in the social media.

Facebook: Yhdenvertaisuusvaltuutettu
Twitter: @yhdenvertaisuus
Instagram: @yhdenvertaisuus
website: www.syrjintä.fi

The website contains instructions on submitting a discrimination complaint in 28 languages. In addition, the video material of the Non-Discrimination Ombudsman has been gathered on its own YouTube channel.

Reports. The Non-Discrimination Ombudsman aims, within her resources, at publishing different reports to support her work. In 2014, the Ombudsman for Minorities published a report on discrimination experienced by the Roma population. In 2016, the Ombudsman prepared a report for the Discrimination Monitoring Group of the Ministry of Justice on discrimination experienced by persons with disabilities. In 2017, the Ombudsman prepared studies on the Finnish Immigration Service's decisions regarding international protection in 2015–2017, and on the effectiveness of legislation that applies to the assistance of victims of human trafficking. Both of the above-mentioned studies will be published in the spring of 2018, and their results have been utilised in the drafting of this report.

Advisory Board for Non-Discrimination. The Advisory Board for Non-Discrimination has been established in connection with the Ombudsman for the purposes of enabling communication between operators and authorities that are relevant for the promotion of equality and prevention of discrimination, and of processing issues related to equality. The Government appoints the Advisory Board for four years at a time. In connection with the Advisory Board, the Ombudsman has established sub-committees for foreign affairs, disability issues and employment. The sub-committees meet a few times per year to discuss a certain theme in more detail. Through the Advisory Board and sub-committees, the Non-Discrimination Ombudsman receives updated information and relevant feedback on her work, which the Ombudsman uses to develop her operation.

2.2.2 CONTACTS AND STUDIES PROVIDE INFORMATION OF DISCRIMINATION IN FINLAND

Direct discrimination: A person, on the grounds of personal characteristics, is treated less favourably than another person in a comparable situation. For example, when a Roma customer is demanded to pay for the food prior to serving it, whereas the other customers are not.

Indirect discrimination: An apparently neutral practice puts a person at a disadvantage compared with others on the grounds of personal characteristics. In recruitment, for example, job applicants may encounter requirements that are irrelevant for the work in question, such as knowledge of a certain language. However, the practice does not constitute discrimination if it has a legitimate aim and the means for achieving the aim are appropriate and necessary.

Reasonable accommodation: Reasonable accommodation required under the Non-Discrimination Act, so that a person with disabilities is able, equally with others, to deal with the authorities, gain access to education and use services. In each situation, the accommodations must be consistent with the needs of the person with disabilities. The reasonable measures are determined in each case individually, and the accommodations can be carried out differently in different situations. Accommodations in education can be executed by, for example, providing a classroom with the necessary special aid equipment, or by developing the ways in which the studies can be carried out. In employment, accommodation can mean adjusting the tasks, work station or tools to suit the person with disabilities, for example. The accommodations may not cause an unreasonable financial or other burden on the party implementing them. Denial of reasonable accommodation is discrimination.

During the first three operating years of the Non-Discrimination Ombudsman, she has received contacts concerning all grounds for discrimination. Contacts regarding origin and disability have been the most common ones, both amounting to over 20 per cent of all contacts. Many contacts have also been received regarding other personal characteristics. These have concerned suspected discrimination based on, for example, place of residence, unemployment, occupation, criminal background, imprisonment or substance abuse. Other per-

sonal characteristic can also refer to an individual's legal status, if the person, for example, has payment default entries, is completing their first higher education degree, is a conscript, is banned from engaging in commercial activities, or is residing in Finland without a residence permit.

With regard to age-related contacts it must be noted that they mostly concern various types of general age limits or discounts or services targeted to a specific age group, rather than the negative treatment of an individual on the basis of age. The Non-Discrimination Ombudsman has processed the justifications of general age limits. For example, the Ombudsman was contacted in a case where a municipality was planning to refuse persons under the age of 16 entry to the self-service library. The refusal was not enforced.

The least amount of contacts has been received concerning grounds for discrimination that were transferred to the Non-Discrimination Act from labour legislation: opinion, political activity, trade union activity and family relationships.

Individuals vulnerable to discrimination on the basis of various characteristics at the same time may encounter multiple discrimination. The Non-Discrimination Ombudsman has received contacts regarding such events, as well. Gender-based discrimination falls within the remit of the Ombudsman for Equality. However, the Non-Discrimination Ombudsman is authorised to handle a matter of multiple discrimination even if one of the grounds for discrimination is related to gender. According to a government proposal ([HE 19/2014](#)), the Non-Discrimination Act is applicable to cases of multiple discrimination, for example when a person is, without an acceptable reason, treated differently in comparison to others based on both his/her gender and age. The scope of application of the Non-Discrimination Act encompasses also multiple discrimination cases where two or more characteristics related to an individual – such as gender – only together lead to a situation where the different treatment of the individual constitutes prohibited discrimination. Such a case is called intersectional discrimination.

Members of different minorities face new kinds of challenges in different stages of their lives, and in the context

of the related services. This combination of various grounds for discrimination is not always taken into account in individual cases. This issue was raised in the report published by the Ministry of the Interior in 2014 concerning discrimination encountered by older members of minorities in the social welfare and healthcare services (Ikäihmisten moninaisuus näkyväksi): Selvitys vähemmistöihin kuuluvien ikääntyneiden henkilöiden kokemasta syrjinnästä sosiaali- ja terveyspalveluisissa.) Consequently, an individual's entire lifespan should be taken into account in the promotion of equality. For example, the features related to the realisation of the rights of older members of sexual minorities or older persons with disabilities are partly different than those related to the rights of working-aged or young people.

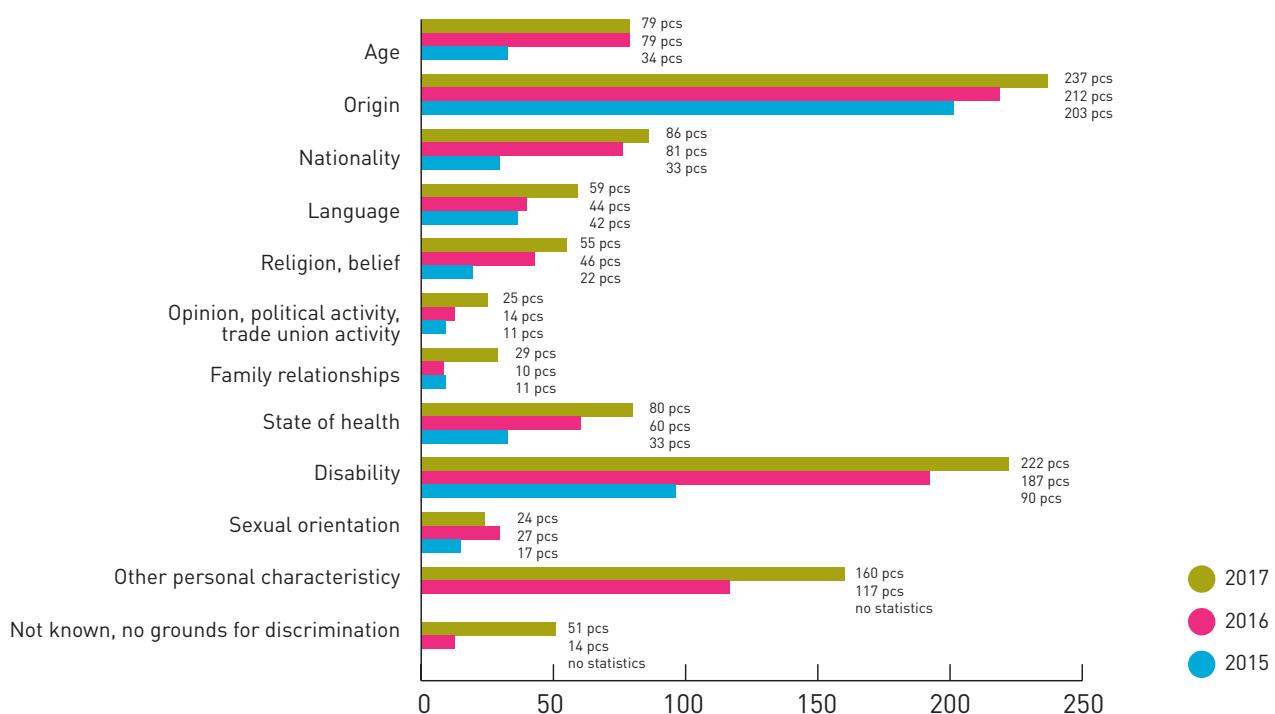
The importance of increasing awareness of multiple discrimination has been highlighted in a recently published report on the human rights of minorities within minorities and multiple discrimination (Vähemmistöjen sisäisten vähemmistöjen ihmisoikeudet ja moniperusteinen syrjintä (Juridica Lapponica 43)). Better reporting of multiple discrimination, both nationally and to supranational human rights monitoring bodies, is crucial for the prevention of multiple discrimination and for getting multiple discrimination acknowledged in legislation, for example.

The number of contacts received by the Ombudsman is not necessarily a direct indicator of the amount of actual discrimination, or of the groups that encounter discrimination most often. Groups that are represented by a strong non-governmental organisation and that are linked to well-publicised equality issues may be more aware of the Non-Discrimination Ombudsman than others. Issues related to origin, nationality and language formed the most central tasks of the former Ombudsman for Minorities, so her competence in these areas is best known.

Discrimination in Finland is also depicted by the complaints submitted to the Ombudsman for Equality, contacts received by the occupational safety and health authorities monitoring discrimination in the employment, applications received by the Non-Discrimination and Equality Tribunal, and court-processed legal cases related to discrimination. To gain more detailed information on discrimination, relevant research is required.

Late in 2017, the European Union Agency for Fundamental Rights published the Second European Union Minorities and Discrimination Survey (EU MIDIS II). From Finland, the survey included interviews with immigrants and their children, in other words first and second

DISCRIMINATION CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN IN 2015, 2016 AND 2017 ACCORDING TO THE GROUNDS FOR DISCRIMINATION



generation immigrants, who, based on their own or their parents' native country, came from sub-Saharan Africa. According to the results of the survey, 45 per cent of the respondents had encountered discrimination in Finland during the last 12 months. The figure gives cause for concern.

Gaining comparable and regularly repeated research data on discrimination is essential to prevent discrimination and promote equality. A regularly conducted barometer that would take the different grounds for discrimination into account would produce analysed data on discrimination, which would create a more sturdy foundation for intervening in discriminatory structures and problems. As a part of the Government's National Action Plan on Fundamental and Human Rights, the Ministry of Justice and the Human Rights Centre are implementing a fundamental rights barometer in 2018–2019, which is used to analyse the citizens' views on the equal enforcement of fundamental rights in Finland. The barometer studies, among other issues, the general knowledge of certain population groups regarding the fundamental rights in Finland, perceptions of the importance of different rights, and experiences of the realisation of said rights in people's everyday lives. The barometer is hoped to create a foundation for regular gathering of information concerning discrimination.

By way of research, it is possible to investigate certain population groups' access to their rights. Access to rights means in a broader view the realisation of rights, whereas in a narrower sense it is a question of whether individuals receive efficient and fair treatment in a situation where they suspect their rights have been violated. One group that is likely to have insufficient access to their rights are the children. In theory, the legal remedies referred to in the Non-Discrimination Act are applicable equally regardless of age, but the Non-Discrimination Ombudsman has not received any complaints from children themselves. Contacts regarding early childhood education and care, school or leisure activities, for example, come from children's guardians or from persons working in the relevant field. More information is needed on discrimination related to children. Since 2017, the results of the School Health Surveys, conducted by the National Institute for Health and Welfare, have produced more and more information concerning experiences of discrimination and harassment in relation to

a minority status. Based on the results, the children and young people belonging to minorities encounter more harassment and discrimination in schools than others. Through regular implementation of the School Health Survey, it is possible in the long run to gain comparable data on the development of the welfare and discriminatory experiences of the children and young people.

The Non-Discrimination Ombudsman regularly receives contacts that do not constitute discrimination contrary to the Non-Discrimination Act. However, these cases may still involve poor administration, inappropriate treatment, or a problem related to other legislation or implementation thereof. The refusal of disability services is one example of an area, where the contacts received by the Ombudsman are related to the implementation of the legislation on disability services, rather than to discrimination under the Non-Discrimination Act. However, problematic access to rights does have a negative effect on the inclusion of persons with disabilities, and it prevents the realisation of the de facto equality of persons with disabilities. Consequently, the obligation of authorities to foster equality shall be acknowledged extensively in all organisation of public services.

Sometimes there lies a broader problem related to attitudes behind an individual case of discrimination. For example, it may be difficult to change the atmosphere in an organisation by intervening in an individual case, but in some situations highlighting the problem may bring about an organisational shift. The Non-Discrimination Ombudsman promoted reconciliation between a city and a resident in a case, where the city had procured emergency housing services from a religious association. The association required the customer to participate in religious activities against the customer's belief. After the reconciliation proceedings, the city apologised for the event and paid the victim of discrimination EUR 4,000 in compensation. In addition, the city expressed intention to take measures to ensure that similar events will not take place elsewhere in their housing services.

According to the Non-Discrimination Ombudsman's assessment, a large portion of discrimination still remains hidden. The reasons for this are varied: the victims of discrimination may not trust authorities, or their awareness of their rights and the legal remedies may be insufficient. People may fear the consequences of

taking a matter forward, and the legal remedies do not always produce the desired result. For example, the nature of some forms of structural discrimination is such that it cannot be efficiently tackled with the non-discrimination legislation. If the equality impacts have not been acknowledged in the drafting of legislation, the law can place a certain group in a less favourable position in comparison to others. In the autumn of 2015, the Non-Discrimination Ombudsman expressed her concern regarding the impact on equality that restricting a child's right to early childhood education and care on the basis of the parent's situation would have. The Government's draft proposal did not include a comprehensive assessment of the proposal's de facto impact on the equality of children and on a child's rights. After the amendment to the right to early childhood education and care entered into force it has become evident that the reform has a particularly negative impact on the children of single parents, for example.

Experiences of discrimination may cause the victim to suffer from anxiety, depression, low self-esteem and feelings of marginalisation. If there are several experiences of discrimination, sorting them out takes a lot of time, and these experiences affect the individual's functional capacity. A single individual may not necessarily have sufficient resources to intervene in discrimination. Sometimes discrimination continues for years and has a significant impact on a person's wellbeing and opportunities to study, work or use services in an equal manner.

The under-reporting of experiences concerning discrimination is a challenge for the Non-Discrimination Ombudsman. According to the EU-MIDIS II survey, discrimination is a recurring experience: Persons with sub-Saharan background, who have encountered discrimination in Finland, have indicated that they have experienced discrimination at least 4.6 times a year. In 2016, the Ministry of Justice published [a survey on hate speech and harassment](#) and their influence on different minority groups: the Roma, the Sámi, foreign-language speakers, foreign nationals, persons with immigrant background, persons with disabilities, and members of religious minorities and LGBTI people. According to the survey, 20–30 per cent of the victims of hate speech and harassment had, depending on the target group, encountered discriminatory situations more often than once a month during the last 12 months.

According to the report on the discrimination experienced by persons with disabilities in everyday life, prepared by the Ombudsman in 2016, 64.2 per cent of the respondents had experienced discrimination in some area of their life during the last 12 months. More than half of the respondents (53.9 %) stated that their disability had been the reason for discrimination. Many reported experiences of discrimination based on their physical condition and age. The report also dealt with the awareness of rights. According to the report, persons with disabilities are aware of what discrimination means and know their rights, but in many cases they choose not to report discrimination, because they do not deem their experience to constitute serious enough discrimination. Many were not aware of a body that could help and provide guidance for the victims of discrimination.

The Roma face extensive discrimination in different areas of life. According to the survey on discrimination experienced by the Roma, conducted by the Ombudsman for Minorities in 2014, 68.7 per cent of the Roma respondents had experienced discrimination in some area of life during the year preceding the survey. The Non-Discrimination Ombudsman has received contacts pertaining to discrimination encountered by the Roma, concerning the action of both the private sector and authorities. The received contacts have also involved, for example, inappropriate action of the police when a member of the Roma population has been reporting an offence, or, in the private sector, discrimination related to for example entry into a restaurant, or inappropriate treatment in stores or service stations. The contacts also often indicate that the person has experienced inappropriate treatment or discrimination previously, as well.

Persons with Somali as their native language form the third largest foreign-language linguistic minority in Finland after the speakers of Russian and Estonian. Discrimination against people with Somali background is very common. The Non-Discrimination Ombudsman receives relatively few contacts from the Somali-speaking population concerning their background. Discrimination can only be tackled if it is reported. Individual cases can be highly significant, if they can be utilised to intervene in discriminatory structures.

The awareness of rights means that a person knows what discrimination is, and can identify discrimination if they encounter it. The fact that a victim of discrimination knows, at the very least, where they can get help and advice in investigating the matter is also a fundamental feature of adequate awareness of rights. It can even be said that awareness of the existing judicial bodies is more important than individuals themselves knowing if they have been discriminated against. A low-threshold operator, such as the Non-Discrimination Ombudsman, can work together with the customer to determine, whether it is a case of illegitimate practice or something else. Most importantly, victims of discrimination or persons suspecting discrimination should know who to contact to take the matter further. In light of the above-mentioned research, awareness of the judicial bodies must be increased. The Non-Discrimination Ombudsman must do her part to respond to this challenge.

Complaints submitted to the Non-Discrimination Ombudsman often concern structural discrimination, which can only be influenced through long-term action. The key factor in the realisation of equality on the level of social structures is the systematic assessment of equality impacts and ambitious acknowledgement of the results thereof in all legislative drafting and public sector projects, so that legislation would already from the very beginning be actually equal and acknowledge the versatility of individuals. Altering the structures of society requires that the individuals involved in drafting legislation will receive training on equality and the assessment of equality impacts, and that policy guidelines are established on placing due weight on equality impacts in decision making.

The assessment of equality impacts must be established as part of all legislative drafting and the preparation of Government projects.

2.2.3 OBLIGATION TO PROMOTE EQUALITY IN LEGISLATION

With the current Non-Discrimination Act, legislation offers good instruments for promoting equality. It obliges authorities, employers, education providers and educational institutions to promote equality and draft a concrete equality plan. With regard to employers, the obligation of drafting an equality plan applies to companies with a minimum of 30 employees, but the obligation to promote equality applies to all employers.

Under the Non-Discrimination Act, a private operator performing a public administrative task is obligated to promote equality. The obligation imposed on an operator performing a public administrative task is essential, especially considering the amount of public services that is currently outsourced.

The planning obligation was previously applied only to authorities and, out of all the grounds for discrimination, only to ethnic origin. In the current Non-Discrimination Act, the obligation of preparing an equality plan was extended, so that the realisation of de facto equality must be assessed and implemented with relation to all the grounds for discrimination referred to in the Act.

It is advisable to utilise the statutory obligation of promoting equality comprehensively and to aim at establishing equality thinking as part of all activities of authorities, employment and educational institutions alike. Promoting equality benefits also other operators, such as non-governmental organisations. The methodical and goal-oriented promotion of equality is not always based on the Non-Discrimination Act. For example, the promotion of non-discrimination and equality is an eligibility requirement for state aid under the Youth Act.

In the Non-Discrimination Ombudsman's opinion, extending the obligations of promoting equality and preparing an equality plan is a significant step forward. The purpose of equality planning is to improve the situation by promoting equality in each organisation as appropriately as possible. For this reason, the initial survey is of vital importance in equality planning, as it provides information on the actual equality situation in the organisation with respect to the different grounds for discrimination in particular.



The equality plan is not a document but rather a process, in which the implementation and supervision of the planned measures and assessment of the changes in the equality situation are essential. To support equality planning, the Non-Discrimination Ombudsman and the Ministry of Justice give instructions, produce material and provide training.

The enforcement of operational promoting and planning obligations is supervised by the Non-Discrimination Ombudsman and, with regard to employers' obligations, the occupational safety and health authorities. As a result of assessing an individual case of discrimination it can be found that the party guilty of discrimination has, in addition to the discriminatory action, neglected their obligation to promote equality under the Non-Discrimination Act.

WHAT IS AN OPERATIONAL EQUALITY PLAN?

Authorities, educational institutions and education providers must prepare an equality plan pertaining to their operation. These plans differ from the plans of employers, which concern the equality of the personnel. The equality impact of operation must be evaluated with respect to all grounds for discrimination. The plan must aim at removing obstacles for the realisation of equality in customer service and other activities in a goal-oriented and systematic manner.

During the preparations of the plan, it is advisable to consult different interest groups, such as non-governmental organisations and service users. A service is improved when its users are asked to provide opinions and experiences of the equality impacts that the operation has from their perspective. For example, in the process of making public swimming services more equal and accessible it would be justified to hear customer groups of different ages, persons with different kinds of disabilities, persons using a specific swimming costume due to their religion, different language groups, and members of sexual and gender minorities. The obligation of promoting equality applies to all activities, including measures beyond the ones included in the equality plan. The obligation of promoting equality means that the obligated party must, in decision-making as well as in daily activities, acknowledge the operating environment, resources and other conditions and choose the alternative that promotes equality in an effective, appropriate and proportionate manner.

After the transitional period, the equality plans had to be prepared by 1 January 2017. However, several operators were still missing a plan in 2017. The Ombudsman has encouraged these operators to prepare a well-drafted plan even after the deadline has expired. Complementing an existing gender-equality plan with the word

non-discrimination does not suffice as an equality plan. Unfortunately, such examples have also been witnessed.

From the beginning of year 2018, the Non-Discrimination Ombudsman started monitoring the operational equality plans in a more systematic manner. The supervision is targeted at essential state administrative authorities, for example. In addition, the Ombudsman will in the upcoming years pilot the supervision of educational institutions' planning obligation in co-operation with the Ombudsman for Children and the Ombudsman for Equality. The Non-Discrimination Ombudsman promotes high-quality equality planning also by participating in co-operative projects and consulting different operators' materials. At the moment, the Non-Discrimination Ombudsman is involved as a specialist in, for example, the Finnish Local and Regional Authorities Association's part of the Rainbow Rights project coordinated by the Ministry of Justice, where the aim is to support equality work in municipalities. The Rainbow Rights project has received funding from the Rights, Equality and Citizenship (REC) Programme of the European Union.

Authorities' duty to promote equality and prepare an equality plan applies, among others, to all municipal authorities and to the municipality as a whole. The authorities shall analyse the situation concerning equality in their sector of operation by consulting the civil society. Based on the analysis, authorities shall prepare an operational equality plan which includes the objectives, procedures, responsible bodies, timetable and supervision for the promotion of equality. Circumstances independent of the authority shall also be taken into account in the planning process, as they hinder the realisation of equality in the authority's sector.

The role of municipalities as a provider of services and forums that are necessary for people's everyday life and that support the wellbeing and inclusion of individuals has a vital impact on the realisation of equality. Along with the upcoming regional government reform, a significant portion of the obligations currently imposed on municipalities will be assigned to counties. Counties are also authorities, whose operation is subject to the authorities' duty to promote equality with respect to all grounds for discrimination referred to in the Non-Discrimination Act, and to the obligation of preparing an equality plan for its sectors. The regional

government reform is the perfect opportunity to ensure from the very beginning that systematic and well-organised equality work is established as the foundation for services provided by each county. Planning must be based on the hearing of individuals and bodies that represent the different grounds for discrimination, and on other available information concerning the equality situation in the activities of the relevant agency. The equality plans shall be implemented in the practical work of all sectors. Resources shall also be allocated for the implementation of the plans. In addition, the implementation and impact of the plans shall be monitored. The Non-Discrimination Ombudsman supervises the preparation, quality and implementation of the plans when she, for example, handles cases of reported discrimination pertaining to the operation of municipalities and counties.

The Non-Discrimination Ombudsman has no authority to monitor the equality plans of employers, but she has co-operated especially with the Regional State Administrative Agency of Southern Finland to encourage employers to engage in high-quality equality planning. In 2016, the Non-Discrimination Ombudsman organised workshops for private sector operators, where the goal was to support the companies in preparing a good equality plan and encourage them to promote equality in their activities in a methodical and purposeful manner. The project included three workshop meetings and a company-specific meeting with the Non-Discrimination Ombudsman. Companies could participate in the workshops free of charge, and they were selected through an open application process.

Under the Non-Discrimination Act, private service providers are obligated to prepare an equality plan only when they act as employers. The Ombudsman has recommended that companies should in their plans also pay attention to the equality of their activities in relation to their customers. This can be referred to as operational equality planning. It means evaluating and developing equality with regard, for example, to customer service, marketing and communication, access to services and the capacity to implement accommodations needed by disabled customers. The acknowledgement of diversity brings new customers to the company and prevents complaints concerning discrimination.

2.2.4. PROMOTION OF EQUALITY MUST BE IMPROVED IN SCHOOLS AND IN EARLY CHILDHOOD EDUCATION AND CARE



Every child has the right to a safe learning and growth environment. For this to be reality, the diversity of children and their families must be taken into account in all school activities. Educational materials, content of teaching, accessibility and availability of school facilities, class arrangements, and co-operation between home and school are all examples of areas where there are many needs, as well as concrete measures for promoting equality.

Equality must be promoted in a systematic manner. According to the VET Student Survey, published in 2017, the experiences of discrimination and harassment in vocational education seem to accumulate to foreign-language speaking students. Out of these students, 28 per cent had experienced sexual harassment or, at the very least, occasional bullying by other students, and 23 per cent by teachers. Within the group of foreign-language students, 6 per cent had experienced discrimination by teachers, 13 per cent by other students, and 6 per cent by both. Out of Finnish-speaking students, 4 per cent had experienced discrimination, while the figure was 9 per cent for Swedish-speaking students.

According to the results of the school health survey (2017), young gay and bisexual persons, and boys in particular, had encountered bullying, threats and violence more often than their heterosexual counterparts. In comparison to other young people, gay and bisexual youth felt more often that they did not have any close friends. An equality plan is a way of analysing the situation in the relevant educational institution and implementing concrete measures to improve the learning environment, also for the students belonging to minorities.

According to the view obtained by the Non-Discrimination Ombudsman, equality work in educational institutions is still taking form. In several municipalities, schools and educational institutions have been provided with material to support their equality plans. In some municipalities, the equality plan has been prepared on the municipal level and then replicated to the educational institutions, which is not sufficient under the Non-Discrimination Act. Equality planning must take place in individual institutions, so that it will be based on the actual needs of each institution. Efficient and productive co-operation is based on listening to the pupils, students, and guardians.

The Non-Discrimination Ombudsman works in the educational sector in co-operation with, among others, the Ombudsman for Equality. The obligations of promoting equality, imposed on educational institutions and education providers, are identical in the Non-Discrimination Act and the Equality Act, and many educational institutions prepare a combined plan encompassing both equality and non-discrimination. Indeed, it is often sensible to convey the obligations of the Non-Discrimination Act and the Equality Act consistently and simultaneously in educational and communication activities. In 2018, the Non-Discrimination Ombudsman takes part as a specialist in the Finnish National Agency for Education's manual work, aimed at preparing an equality and non-discrimination manual for upper secondary educational institutions.

From the children's perspective it would be preferable if the obligation of equality planning would, in a more explicit manner, encompass the entire educational system, so that all providers of early childhood education and each early childhood education unit would also be imposed with a special obligation to promote equality and prepare an equality plan, just like other educational institutions and education providers. An increasing portion of early childhood education services is becoming private, as the use of the private day care allowance increases and municipalities start implementing the service voucher model. In some municipalities, already 40 per cent of early childhood education takes place in private day-care centres, made possible by the service vouchers, for example. In these cases, the early childhood education provider may be subject to the obligation of promoting equality imposed on private actors who

discharge public administrative functions, but awareness of this obligation is poor. Municipal day-care centres, in turn, are within the scope of the authorities' duty to promote equality and prepare an equality plan. The provisions of the Act on Early Childhood Education and Care and the National Core Curriculum for Early Childhood Education and Care are applicable to all providers of early childhood education and care.

Municipalities are obligated to only choose service providers who enforce the objectives of the Act on Early Childhood Education and Care comprehensively. The prohibition of discrimination and the duty to provide reasonable accommodation, provided in the Non-Discrimination Act, also apply to private service providers. These provisions cannot be bypassed with contractual stipulations stating that, for example, the need for special support would constitute grounds for discontinuing a service contract. When performing their supervisory duties, municipalities and Regional State Administrative Agencies shall pay attention to the equal treatment of children in early childhood education and care. So far, the Non-Discrimination Ombudsman has not received any complaints of service contracts being terminated in early childhood education and care on discriminatory grounds, but the Ombudsman has the capacity to handle such complaints in the future.

"A private day-care centre may choose its customers freely." This sentence is not completely accurate. The choice cannot be made on discriminatory grounds. For example, termination of a contract due to physical condition or need of special support may violate the Non-Discrimination Act and contradict the objectives of the Act on Early Childhood Education and Care. A private day-care centre is obligated to carry out reasonable accommodation, with consideration to issues such as the size of the day-care centre, its financial status, and support available for the accommodations.

The Non-Discrimination Ombudsman recommends that the Non-Discrimination Act shall lay down a unit-specific obligation for early childhood education and care units to promote equality and prepare an equality plan, in the same way as for educational institutions.

2.3. NON-DISCRIMINATION OMBUDSMAN'S INTERACTION WITH CUSTOMERS HIGHLIGHTS MANY FORMS OF DISCRIMINATION

The Non-Discrimination Ombudsman is a low-threshold legal remedy, whose intervening in a case of discrimination helps the victim to gain access to his/her rights in a more gentle manner than a legal process. Based on the experience accumulated under three years it can be said that, in many cases, it has a concrete impact when the Ombudsman contacts different operators. The Non-Discrimination Ombudsman's contact to a party suspected of discrimination also prevents the recurrence of similar discriminatory situations and promotes equality beyond the individual incident.

In a case of discrimination, the Non-Discrimination Ombudsman investigates the possibility of reconciliation with the parties, or the matter can also be taken forward by means of legal proceedings. Victims of discrimination have been afforded compensation and damages. It is problematic that recurring discrimination does not always result in sufficient sanctions.

In the following, we will discuss some of the discrimination complaints received by the Non-Discrimination Ombudsman. With consideration to the number of contacts and handled complaints, these examples have been chosen to give as comprehensive a view of discrimination in different areas of life as possible. In the contacts received by the Non-Discrimination Ombudsman, where customers suspect they have experienced discrimination, the most common grounds for discrimination are origin, disability and other personal characteristics, for example place of residence, occupation, criminal background, obligatory military service or person's appearance.

2.3.1. LINGUISTIC RIGHTS, ACCOMMODATIONS AND RESPECT FOR BELIEFS IMPLEMENTED IN EDUCATION

Under the Non-Discrimination Act, each educational institution is obligated to promote equality and carry out reasonable accommodation required by a pupil or student with disability. However, the Non-Discrimination Ombudsman receives complaints from all educational levels, stating that a pupil or student has, without grounds, been placed in a less favourable position in comparison to others based on his/her personal

characteristic. The practices of municipalities vary in the implementation of the teaching of sign language, for example.

Suspected cases of discrimination occur in pupil and student selections. These cases have been related to, for example, an applicant's origin or a disabled applicant's possibilities to obtain accommodation for the entrance examination arrangements. The Non-Discrimination Ombudsman was heard in the District Court of Helsinki [R15/8331] in a criminal case, in which the study place of a deaf student in a program offered by a private company was revoked when it became apparent that the student would need a sign-language interpreter for his/her studies. The educational institution was found guilty of discrimination: the education provider was sentenced to pay fines and to pay the student EUR 8,000 in compensation for discrimination under the Non-Discrimination Act.

The Ombudsman inspected an educational institution in the autumn of 2015. A student with visual impairment submitted a complaint to the Non-Discrimination Ombudsman because they had been forbidden to use a guide dog in the educational institution's facilities and student accommodation facilities. The institution's decision was based on reports received from some students and staff members concerning dog allergies, and their referral to occupational safety risks caused by the guide dog. The Ombudsman attempted to promote reconciliation between the parties in the autumn of 2015, but there was no progress. The Ombudsman carried out an inspection in the institution in November 2015 to investigate the institution's measures and instructions related to a student's use of a guide dog and to acknowledging the health condition of persons with allergies. In her inspection report, the Ombudsman found that the educational institution had engaged in discriminatory action in imposing significant restrictions on the use of a guide dog. For a person with disability, a guide dog is a necessary aid. The use of a dog should also have been accepted as a reasonable accommodation under the Non-Discrimination Act. The complainant brought the matter to a district court after completing his/her studies. The parties reached reconciliation, which was confirmed in the district court in October 2017.

Linguistic rights in education. The Sámi children's right to receive education in their own language is essential, both for the rights and equal treatment of individuals and the preservation of the Sámi languages. Under section 10(2) of the Basic Education Act, pupils who are living in the Sámi Homeland and know the Sámi language shall be primarily taught in the Sámi language. According to the prevailing official interpretation, pupils receive teaching "primarily" in Sámi, as required by law, when more than half of all education is carried out in Sámi. The implementation of organising teaching in Sámi has varied in municipalities. At the end of 2016, the Non-Discrimination Ombudsman met with representatives of the Homeland and with guardians and teachers of Sámi children with the aim of promoting the organisation of high-quality and sufficiently comprehensive teaching in the Sámi language. The situation of teaching in Sámi and the availability of teaching of the Sámi language even beyond the Sámi Homeland has been acknowledged also by the Finnish National Agency for Education, for example.

The Non-Discrimination Ombudsman emphasises the Sámi children's right to high-quality teaching in their native language. The resources and conditions for teaching, such as the number of trained personnel and appropriate job descriptions, shall be secured in the Sámi Homeland. Whenever possible, Sámi pupils shall be offered teaching in the Sámi language also outside the Sámi Homeland.

Linguistic rights emerged as a topical issue in South-Eastern Finland in 2015, when a pupil had been forbidden to use their own native language (Russian) in school with a friend. The Non-Discrimination Ombudsman found that forcing pupils to converse in Finnish among themselves in situations where this is not necessary for the purpose of achieving the objectives of teaching is in breach of both the child's linguistic rights and of the curriculum, which emphasises the importance of supporting a child's all languages. Furthermore, the school is not authorised to issue such a prohibition.

In addition to interpretation services, enforcing the equality and inclusion of sign-language speakers requires them to learn their own language, but there are deficiencies in the teaching of sign language. In its report on the Sign Language Act, the Constitutional Law Committee (PeVM 10/2014 vp) has highlighted

the importance of learning one's own language, which in this case means sign language. The Committee has deemed it important that each child and their family is guaranteed the opportunity to obtain sufficient teaching of sign language, so that the child's right to their own language, id est sign language, is realised. At the same time, the entire family is provided with the opportunity of functional interaction through a common language. Furthermore, the Constitutional Law Committee required in its report the Government to take action to ensure that the rights of sign-language users are enforced in the entire country in the way they were intended in the drafting of the legislation on their linguistic rights.

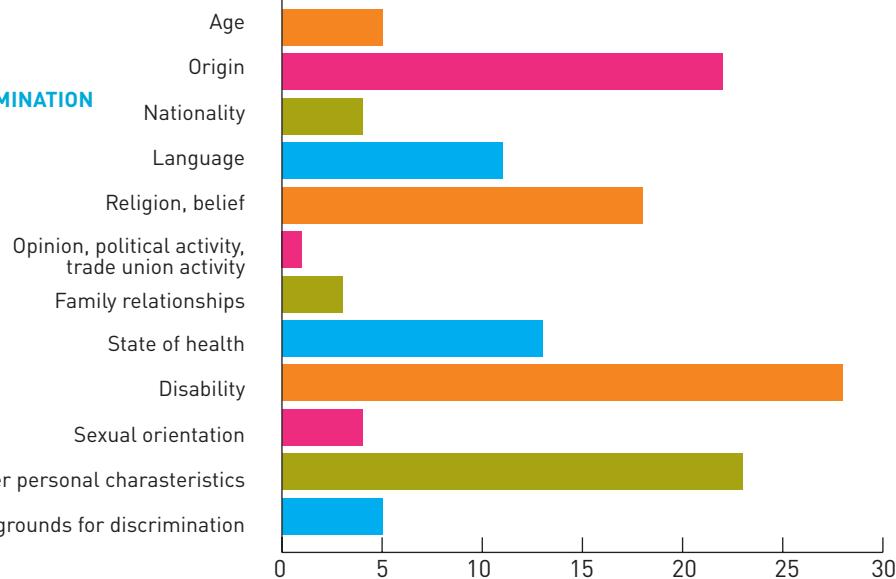
It is noted in the Report of the Government on the application of language legislation that children who have been born deaf or with a severely impaired hearing and their parents, living in different parts of the country, are treated very differently depending on the practices and appropriation policies in their municipality of residence. In some municipalities, the number of teaching hours is insufficient for learning a new language, and in others, no teaching of sign language is granted due to lack of appropriations. Rather than teaching of the sign language, families are sometimes only offered teaching of supportive signing. Consequently, some children and families that need to use sign language are left without a functional common language and interaction. The Government report recommends that the practices of different authorities that prevent or obstruct the possibilities

of a child who is born deaf or with a hearing impairment to learn sign language aside the spoken language should be investigated, and necessary measures should be taken to improve the situation.

The Non-Discrimination Ombudsman finds that the right of sign-language using children to their own language shall be secured in legislation.

Reasonable accommodation in schools. The Non-Discrimination Ombudsman has received several contacts concerning the conditions for and organisation of school transport. The Ombudsman promoted reconciliation in a case where the city had decided to deny school transport of a disabled child who had been admitted to music class. The refusal was based on the fact that it was not the child's local school, and nobody is granted school transport to a school providing optional teaching. The expenses caused to the city by the school transport would not have changed in practice. The obligation laid down in the Non-Discrimination Act to assess the need and possibility of reasonable accommodation had not been taken into account in the matter. After the Ombudsman intervened in the matter, the city granted the child the right to school transport. The city's school transport policy was complemented with a note concerning the obligation of implementing reasonable accommodation to enforce the equality of persons with disabilities under the Non-Discrimination Act.

CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN, EDUCATIONAL AND TRAINING SECTOR ACCORDING TO GROUNDS FOR DISCRIMINATION (137 pcs)



Religion and ethics. In the last few years, several authorities have addressed the organisation of teaching religion and ethics. Persons and bodies representing minority religions and beliefs have also expressed their concern to the Non-Discrimination Ombudsman regarding the teaching of their own religion or ethics in accordance with the curriculum, if teaching groups are combined and teachers lack competence in the subject they teach. The Ombudsman submitted a statement (VWTD-no-2016-396) to the Regional State Administrative Agency concerning the organisation of teaching of the Orthodox religion in the Swedish language in a certain municipality. The Ombudsman found that the combining of teaching groups may violate the prohibition of discrimination and the obligation to promote equality, if teaching as specified in the curriculum is not realised for all jointly taught religions and ethics, and if teachers are lacking competence in some of the religions and ethics they teach. Furthermore, in a decision (EOAK/3469/2016) issued on 11 September 2017 concerning another municipality, the Deputy Parliamentary Ombudsman has highlighted the pupil's right to the teaching and assessment of their own subject in accordance with the National Core Curriculum.

Another recurring theme concerning the equality of pupils with regard to religion or belief is the organisation of belief-related festivities in school. If a school organises a religious activity, such as a visit to a church, the non-participating pupils shall be provided with some similarly special program, and they shall be notified of the activities in the same way as of the religious activities.

The Non-Discrimination Ombudsman considers that all common school festivities, such as Christmas and Spring parties and the issuing of report cards, shall be organised to suit all pupils.

2.3.2. DIVERSE PRACTICES IN PRIVATE SERVICES IN STORES, RESTAURANTS AS WELL AS IN BANKING SERVICES



The prohibition of discrimination and the obligation to implement reasonable accommodation, as laid down in the Non-Discrimination Act, apply to all providers of goods and services. The Non-Discrimination Ombudsman receives complaints concerning various private services based on many different grounds for discrimination. Contacts pertaining to private services may concern social welfare and healthcare services as well as education and living, in which case they are included in the statistics of the relevant sector. Contacts concerning other private services are generally related to banking and insurance services, restaurant and hotel services, or the commercial sector. A service has either been refused completely due to the customer's characteristic such as state of health, disability, origin or language, or the accommodations required by a disabled customer have not been assessed or implemented adequately. Sometimes it is of question of a misunderstanding concerning the service provider's right to choose customers freely. Selection of customers on discriminatory grounds is prohibited under the Criminal Code and the Non-Discrimination Act.

THE MOST COMMON GROUNDS FOR DISCRIMINATION IN OTHER PRIVATE SERVICES 2017



Other private services include other services than social and health services, education and training or housing services.

The Non-Discrimination Act lays down provisions on what constitutes discriminatory treatment in private services, and what constitutes justified different treatment. The Non-Discrimination Ombudsman has worked actively to intervene in discrimination occurring in, for example, public transport, stores, the restaurant industry, the insurance sector and banking services, and to prevent harassment.

Compensation and damages. Under the Non-Discrimination Act, victims of discrimination may claim compensation for discrimination from the provider of goods and services that has discriminated against them contrary to the law. According to the Tort Liability Act, a person can receive compensation for anguish arising from an offence, for example, if the person has been discriminated against by an act punishable by law or if the person's dignity has been severely violated, intentionally or out of gross negligence, in other comparable manner.

In the autumn of 2017, the district court of Central Ostrobothnia (R 17/404) issued a sentence for discrimination in a criminal case, where three persons were treated in a discriminatory manner in a clothing store due to their ethnic origin. The company in question and its employee who was found guilty of discrimination were ordered to jointly pay each victim of discrimination EUR 500 in damages for emotional distress. In addition, the company was ordered to pay each victim of discrimination EUR 1000 as compensation under the Non-Discrimination Act. The employee in charge of the store was found guilty of discrimination in that he/she first refused to let in three persons without the presence of a security guard, and finally inside the store he/she served said customers in a more restrictive manner than other customers. The verdict shows that victims of discrimination are entitled to receive compensation under the Non-Discrimination Act for the violation of their rights, as well as compensation for the distress and possible material damages caused by the deed.

Based on the contacts received by the Ombudsman, the Roma encounter discrimination in various private services, such as stores and service stations. In one store the guidelines concerning suspected cases of shoplifting seemed to contain illegal instructions with ethnic profiling, based on which young Roma customers were treated inappropriately in the store. A contact from the

Non-Discrimination Ombudsman resulted in an apology to the customers and a change in the guidelines. In another case, the prevalence of discriminatory attitudes towards the Roma presented itself in that a portion of an entrepreneur's customers informed the entrepreneur that they do not want to be served by an employee with Roma background.

Insurances and credits. For some groups of illness and disability, there have emerged problems in obtaining an insurance. The Non-Discrimination Ombudsman has taken notice of that insurability should always be evaluated individually, and not just simply on the basis of a certain diagnosis or disability.

A similar notice is related to credit institutions. The Ombudsman has submitted to the National Non-Discrimination and Equality Tribunal a case where a credit institution is suspected of discriminatory action, when it refused an online-store customer credit based on the customer's place of residence. The credit institution evaluated the customer's credit rating on the basis of statistical data gathered from the relevant area of residence, instead of evaluating the customer's credit rating individually. In this particular case, other potential grounds for discrimination, in addition to the place of residence, included age, gender and language. In the opinion of the Ombudsman, this gives cause to a presumption of multiple discrimination, although even the evaluation of a single ground for discrimination appears to lead to a discriminatory result. This case is also an example of how procedures carried out by different operators on the basis of personal data and without any individual assessment can become a substantial obstacle for the enforcement of equality in the future. The case is still pending in the Tribunal.

In the insurance sector, there has emerged an issue concerning the possibility of persons with no knowledge of the Finnish or Swedish language to obtain personal insurances. The Non-Discrimination Ombudsman endeavours to get the possibility of interpretation accepted in insurance services. Furthermore, it is difficult for persons with an asylum-seeker background to obtain an insurance because they are not necessarily able to provide comprehensive information concerning their medical history. With regard to persons with disabilities, there have been some instances where they have been refused

an insurance. For example, individuals with Asperger's Syndrome have been refused insurances, because they have been deemed to have a greater predisposition to depression or to have an accident, due to the Asperger's Syndrome. The Non-Discrimination Ombudsman has underlined that insurances may not be automatically refused simply on the basis of a customer's diagnosis or disability.

On the other hand, the question of vicarious liability and the availability of insurance coverage has emerged in relation to the employer model concerning personal assistance under the Disability Services Act (Services and Assistance for the Disabled Act, 380/1987). In the employer model of the Disability Services Act, person with a disability acts as employer for his/her assistant, unlike in cases where personal assistance is organised either with a service voucher or procured services, or by the municipality. In general, an employer shall compensate for damages caused by an employee. However, sometimes a person with a disability as an employer cannot obtain insurance coverage. In the view of the Non-Discrimination Ombudsman, the possibilities of the users of personal assistance to receive compensation for damages caused by their assistants should be harmonised and secured by law, regardless of what model referred to in the Disability Services Act is used to provide the person with personal assistance.

Verification of identity. In several fields, the cases of suspected discrimination are typically related to the verification of identity. The Finnish banking services have been involved in judicial proceedings concerning the types of personal identification, and the awarding countries thereof, that are acceptable to obtain access to online banking services. In these cases, the aim has been to find out whether the restriction of personal identification has been legally justified, or if the action has constituted discrimination. The Ombudsman for Minorities brought two such cases to the National Discrimination Tribunal of the time. After the complaints, the Supreme Administrative Court issued a Yearbook decision for these cases (KHO:2017:19). At the moment, online banking credentials are the most commonly used tool of electronic identification in Finland. Credit institutions must offer this service to all in a non-discriminating and equal manner, as the lack of electronic identification tools significantly hinders the everyday life of individu-

als. In co-operation with the Financial Supervisory Authority and Finance Finland, the Non-Discrimination Ombudsman promoted the reform of foreign citizen's identity card, which was implemented in 2017. The reform improved the situation in relation to banking services. Adopted in 2017, amendments to the Act on Credit Institutions concerning the right to basic banking services, and including online banking services to the basic banking services, also promote the availability of services.

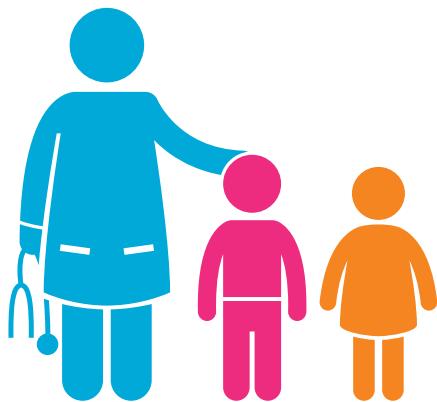
Restaurant services have been linked to situations where a person with foreign background has been denied access to a restaurant, even though they have presented valid identity documentation. The catering business has also engaged in public dialogue concerning personal identification documents required by legislation. The Ombudsman has observed in her work that, on the basis of the age limit for serving alcoholic beverages, certain restaurants have demanded that also persons other than those who appear young must prove their age, especially if they are foreign nationals or supposedly foreign nationals. According to the Ombudsman's experience, these events have often involved an attempt to select customers on discriminatory grounds prohibited under the Criminal Code and the Non-Discrimination Act.

The District Court of Helsinki (16/143258) sentenced the doorman of a restaurant in Helsinki to pay a fine for ethnic discrimination. The doorman refused to let in a customer with foreign background due to the customer's ethnic origin. The doorman did not accept the foreign customer's personal identification on equal grounds in comparison to main population. Although the restaurant generally deemed a driving licence as acceptable identification to grant entry, this procedure was not applied to the customer with foreign background. The Court of Appeal did not grant leave for continued consideration.

The Non-Discrimination Ombudsman expressed her concern regarding the strict restriction of acceptable personal identification documents to the Social Affairs and Health Committee during the reform of the Alcohol Act in December 2017. Due to the statement of the Ombudsman, the Parliament amended the Government's proposal for the Alcohol Act for the better. In the verification of age, restaurants must accept also other reliable forms of picture identification awarded by an authority than just a picture identity card, driving licence or passport.

These may include, for example, an alien's passport and a refugee travel document. After this, the National Supervisory Authority for Welfare and Health (Valvira) changed their guidelines to restaurants to comply with the decision of the Parliament.

2.3.3. DISCRIMINATION IN SOCIAL WELFARE AND HEALTHCARE SERVICES AND IN HOUSING

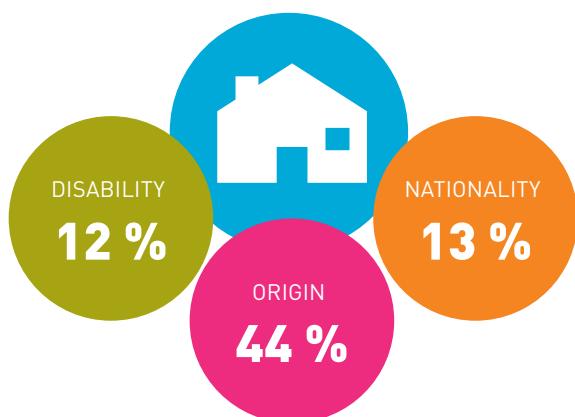


Social welfare and healthcare services are essential for the wellbeing and everyday life of individuals. Often these services are quite intimate by nature: as customers in health and social services, individuals must process their most personal matters or let an unknown person touch their body, for example. Along with the health, social services and regional government reform, these important services face major changes. The Non-Discrimination Ombudsman has expressed her concern on how the equality of customers from different minority groups is enforced in the future. Both the availability of

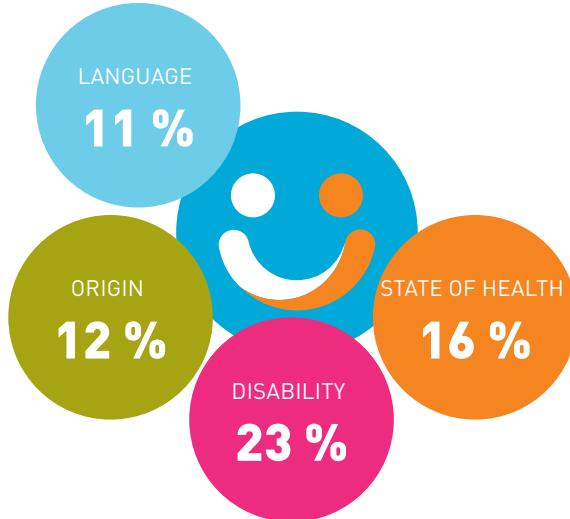
services and safeguarding the provision of services in the Swedish and Sámi languages are essential obligations, which will not be fully enforced unless they are underscored in the reforms.

According to the Sámi Barometer 2016 study, there are major differences between the Homeland municipalities in the availability of Sámi-language health services. There are also distinct language-specific differences in the availability of services. According to responses received in the Sámi Barometer study, no health services in Skolt Sámi are available, and services provided in Inari Sámi are also few and far between. The challenge in organising social welfare and healthcare services delivered in Sámi is the lack of Sámi-speaking professionals, especially in the public sector. There is a particular shortage of Sámi-speaking employees in physician's services, child health clinics, school healthcare, health centres' in-patient wards, intoxicant abuse and mental health services and institutional and sheltered housing services for older people. Services such as child health clinic services, which include, for example, the monitoring of children's linguistic and neurological development, should be available in the child's own native language, without the use of an interpreter. According to the Report of the Government on the Application of Language Legislation (2017), there is very little material, such as brochures, available in the Sámi languages. The development of Sámi-language services should be invested in by improving the availability of personnel with language skills, for example. In the future, Sámi-language services

THE MOST COMMON GROUNDS FOR DISCRIMINATION IN HOUSING 2017



THE MOST COMMON GROUNDS FOR DISCRIMINATION IN SOCIAL WELFARE AND HEALTHCARE SERVICES 2017



should, to a certain extent, be somehow made available also beyond the Sámi Homeland.

Securing services for the minorities requires continuous development, an active approach and a genuine will to offer better services. With regard to the upcoming social and healthcare reform, the Non-Discrimination Ombudsman has conveyed her views on the assessment of equality and the obligation of promoting equality to the National Institute for Health and Welfare, who will be responsible for evaluating the health and social services implemented by the counties in the future.

So far, in the majority of complaints received by the Non-Discrimination Ombudsman with regard to the health and social services, the nature of the matter has primarily not involved discrimination referred to in the Non-Discrimination Act. For example, the contacts may concern the implementation of legislation within a municipality's power of discretion, in which the Non-Discrimination Ombudsman has only a limited capacity to intervene in an individual case. In these cases, a person's primary way of accessing his/her rights is appealing the case using a regular legal remedy, an administrative appeal. The Non-Discrimination Ombudsman has intervened in cases concerning, for example, the determination of under-aged asylum seekers' age in an institution, the availability of Swedish-language emergency care services, the acknowledgement of a child's religious background in the placement decision when a child is taken into protective care, the inadequate accessibility of health and social service facilities, and the inappropriate treatment of customers with immigrant background at a health centre.

Under the Act on Assisted Fertility Treatments, fertility treatment can be given to same-sex female couples and to women seeking treatment alone. In practice, these treatments have not, however, been provided in public healthcare. The Ministry of Social Affairs and Health, the National Supervisory Authority for Welfare and Health Valvira and the Parliamentary Ombudsman have repeatedly intervened in the problems concerning the equal availability of treatment, but the situation has not changed. In November 2015, the Non-Discrimination Ombudsman brought to the National Non-Discrimination and Equality Tribunal a case where a woman in a relationship with another woman was refused treatment.

In the decision (80/2015) issued in December 2016, the Tribunal found that the doctor who had refused the treatment had discriminated against the client based on her sexual orientation. The action of the attending physician was based on instructions given by the medical directors of university hospitals, according to which treatment is not provided for female couples. The Tribunal found these instructions to constitute discrimination contrary to the Non-Discrimination Act, and imposed a conditional fine to enforce compliance with its decision. Each medical director has appealed the Tribunal's decision to an administrative court, so as of yet, a legal solution is pending in the matter.

Housing. Housing is a fundamental right, and housing-related discrimination places an individual in a particularly difficult position. Discrimination in resident selections is prohibited, but it still occurs, particularly in relation to ethnic origin and citizenship. There have been housing notices in which the apartment is only made available for Finnish residents, or a certain population group is excluded.

In January 2018, the Ministry of the Environment published a follow-up report on equality of the Roma in housing, which is a follow-up study to the Report on housing and equal treatment for Roma, published in 2012. The report evaluated the development of equality in the housing of the Roma and the effectiveness of implemented measures. According to the report, the equality of the Roma in housing relative to the main population has improved and the population groups are now more equal as housing applicants. However, financial problems have increased, among both the mainstream population and the Roma. The young Roma, in particular, often have financial problems that effect housing. There is the risk that some of the Roma may be excluded from the usual housing market. In some cases, the practices of permission to move and avoidance obligation constitute an additional challenge. They are no longer reflected in the work of housing sector as much as before, but in social welfare work their impact is well known. The report recommends closer interaction within the stakeholders in the housing sector and advising the customers to seek services, as well as continuing the work on changes within the Roma community.

In the housing-related contacts received by the Non-Discrimination Ombudsman from members of the Roma population, the other party is often a municipality. The most common reason for contacting the Ombudsman is that an individual cannot get an apartment from a municipality or a rental housing company. In some cases it is said that a private landlord has not been willing to rent an available apartment after hearing that the applicant is a member of the Roma community. Another common reason for a contact is related to problems during residence. The person contacting the Ombudsman feels that, for example, the housing company, the property manager or a social worker has treated them in a discriminatory manner due to ethnic origin. There are many other reasons behind contacts during residence, such as disputes with neighbours, discrimination against the Roma, and termination of rental agreements.

The Non-Discrimination Ombudsman promoted reconciliation in a case where a company in charge of a city's rental housing operations was placing tenants in apartments according to their origin. The discriminatory practice resulted in applicants being treated less favourably than others due to their ethnic origin, because the company was restricting the applicants' possibility of applying for certain apartments based on their origin. In the reconciliation agreement, the company committed pledged to comply with the prohibition of discrimination, and paid the applicant EUR 2000 in compensation.

2.3.4. COMBATING HATE SPEECH WITH THE PROHIBITION OF HARASSMENT LAID DOWN IN THE NON-DISCRIMINATION ACT

The Non-Discrimination Act prohibits harassment related to any of the grounds for discrimination provided in section 8(1) of the Non-Discrimination Act. Harassment means action that is in deliberate or de facto infringement of the dignity of a person, when the action results in the creation of a degrading or humiliating, intimidating, hostile or offensive environment towards the person.

The prohibition of harassment laid down in the Non-Discrimination Act is one measure for intervening in hate speech. The Non-Discrimination Ombudsman works to prevent and combat hate speech by, for example, participating actively in the public debate, lobbying for combating hate speech, investigating harassment reports, taking harassment cases to the National Non-Discrimination

and Equality Tribunal, and submitting requests for investigation to the policy or the Prosecutor General. There is accumulated case law on cases involving defamation and ethnic agitation, but precedents are needed concerning the provisions on harassment.

Discrimination as prohibited in the Non-Discrimination Act is often directed at ethnic minorities. The media and social media have presented many stereotypical and insulting perceptions of the Sámi people, and these may constitute harassment prohibited under the Non-Discrimination Act. The problem of online discussions lies in the fact that it is very difficult to intervene in individual comments with legislative measures, unless the comments are extremely blatant or recurring. However, even the milder expressions may form a part of a more extensive anti-Sámi atmosphere and, in their part, silence the Sámi population. The Sámi are an indigenous people, whose right to their own language and culture is secured in the Constitution. Another problem is the wrongful exploitation of the Sámi culture, when the Sámi people's cultural heritage, such as outfits, are copied or showcased with no connection to the Sámi people themselves. The enforcement of the Sámi population's rights and the significance of their status as an indigenous people have been a recurring topic in public debate under the term of office of the Non-Discrimination Ombudsman.

The Non-Discrimination Ombudsman has received knowledge of some suspected cases of harassment in schools and educational institutions. In the spring of 2017, the Non-Discrimination Ombudsman negotiated an agreement in an instance where a student was harassed by a teacher based on the student's nationality. The teacher had inappropriately insulted Estonian students in the presence of other students. As a result of the reconciliation, the educational institution apologised to the Estonian student in the group of the teacher in question, and paid the student EUR 2000 in compensation for discrimination. Promoting conciliation is one of the Non-Discrimination Ombudsman's measures for intervening in discrimination. A reconciliation process is a way for both the victim of discrimination and the guilty party of resolving the matter without possibly lengthy court proceedings.

School is the core environment in a child's life, and any discrimination there may cause life-long trauma. A child cannot choose whether to go to school or not. The responsibility for a safe learning environment is invested in the educational institutions and education providers. In section 14 of the Non-Discrimination Act, the action of an educational institution should be defined as discrimination if the institution does not intervene in harassment against a pupil or student. Under the same section it is already stated that an employer's actions are to be considered discrimination if the employer, after having been informed that an employee in their employment was subjected to harassment as referred to in subsection 1, neglects to take action to remove the harassment.

It is also worth considering, whether this obligation should be extended to apply to all situations where the victim of discrimination is not able to independently change their operating environment, as is the case in institutional care or in military and non-military service, for example. Such a procedure has been established in Sweden, for both educational institutions and military and non-military service.

Under the Non-Discrimination Act, the action of an educational institution shall be defined as discrimination if the institution does not intervene in harassment against a pupil or student. A similar statute shall be considered also for the parties in charge of institutional care and military and non-military service.

Freedom of speech and freedom of assembly. Neither the freedom of speech nor the freedom of assembly give a person the right to violate the dignity of another individual. Just before the Independence Day of 2016, the Non-Discrimination Ombudsman submitted an initiative to the National Police Board suggesting that the police should evaluate the Nordic Resistance Movement's right to protest. Openly racist organisations whose ideology and action are deeply offensive to the dignity of other persons, do not enjoy the freedom of assembly nor the freedom of speech, included in the fundamental and human rights. Intervening in organised racism and hate speech is important to avoid spreading a view that such action would be accepted.

In March 2017, The National Police Board brought an action to the Pirkanmaa District Court for the disbanding of the Nordic Resistance Movement. In the opinion of the National Police Board, no room shall be given to the operation of violent and openly racist organisations in the Finnish society. In its decision issued on 30 November 2017, the Pirkanmaa District Court (17/41766) declared the Nordic Resistance Movement disbanded. The Court deemed it as a society that promotes its objectives, which contradict the democratic values, in ways that are illegal and in blatant violation of fair practices. According to the Court, the Movement subjects ethnic groups to vilification and insult, and spreads hate speech. The Nordic Resistance Movement has appealed the Court's decision, which means that the verdict of the District Court is not valid when this report is being drafted.

A racially motivated demonstration, organised in the spring of 2017 near a school, created a widely disapproving reaction. The Non-Discrimination Ombudsman submitted to the Prosecutor General a request for investigation concerning some of the comments presented in the demonstration. In the demonstration, insulting and offensive comments were expressed regarding a certain ethnic origin, both in general and in relation to a video portraying young persons who apparently were students of the school in question. The Non-Discrimination Ombudsman asked the Prosecutor General to assess whether certain persons who participated in the demonstration were, on the ground of their comments, guilty of ethnic agitation, defamation or other crime in relation to the demonstration. On the order of the Prosecutor General, a preliminary investigation was initiated in the matter.

A demonstration can also constitute harassment under the Non-Discrimination Act, if the demonstration involves action that violates the dignity of members of minority groups and creates a degrading, intimidating or hostile environment towards the persons in question. Based on the Ombudsman's initiative, the National Police Board sent a letter to police departments in January 2017, advising the police units to pay attention to the matters underlined by the Ombudsman and to take necessary measures to relocate demonstrations, if a demonstration is organised, for example, in front of a facility used as housing for asylum seekers or for engaging in religious practices, and the demonstration is in breach of the bystanders' rights.

The provisions on harassment laid down in the Non-Discrimination Act were amended in the reform that entered into force in early 2015. Under the current Act, the deliberate or de facto infringement of the dignity of a person is harassment, if the infringing behaviour relates to a reason referred to in section 8(1), and as a result of the reason, a degrading or humiliating, intimidating, hostile or offensive environment towards the person is created by the behaviour. The earlier formulation was wider and included population groups in addition to individuals. It is stated in the Government proposal that the new, proposed provisions would, in terms of content, be identical to the previous version, and that it was not the legislator's intention to obstruct access to justice (HE 19/2014, p. 78). In the rational of the Act it is noted that the subjective experience of violation is not the decisive factor, but the offensiveness of discrimination shall be evaluated objectively. Consequently, the existence of an injured party should not be a precondition for intervening in discrimination.

The changing of the formulation and the removal of population groups from the criteria have led to an ambiguous situation, where it may be necessary to find an artificial injured party for a case, even though it is a matter of obvious and severe discrimination. Also from an individual's perspective it may be difficult to understand the contents of the provision.

In the autumn of 2016, the Non-Discrimination Ombudsman asked the National Non-Discrimination and Equality Tribunal to ban the displaying of a Nazi flag in a window. The case involved a flag that was displayed visibly to outsiders in a window of a student apartment. In the view of the Ombudsman, this constitutes harassment contrary to the Non-Discrimination Act. The student housing organisation acting as the landlord had asked the tenant to take down the flag, but he/she had refused. The Non-Discrimination Ombudsman finds that the case constitutes discrimination because the public display of a Nazi flag creates a hostile environment towards certain population groups, and towards members of the Jewish minority in particular. In the Ombudsman's opinion, the request for removal of the flag or its removal by statutory force if necessary, does not violate the freedom of speech of the person displaying the flag, as the freedom of speech does not include hate speech or other forms of

expression that are deeply offensive to the dignity of other individuals. The National Non-Discrimination and Equality Tribunal is expected to issue a decision in the matter during the spring of 2018.

2.4. TOWARDS THE FULL INCLUSION OF PERSONS WITH DISABILITIES

Throughout the Non-Discrimination Ombudsman's term of office so far, disability has been the second most common discrimination-related reason for contacting the Ombudsman. The promotion of equality of persons with disabilities has also been one of the focus areas in the Ombudsman's operation in 2016 and 2017. The Ombudsman has received contacts concerning all areas of life. The Non-Discrimination Ombudsman's work highlights many issues related to shortcomings in accessibility and availability. The Ombudsman emphasises the importance of respecting the self-determination right of persons with disabilities, and the full enforcement of equality in the society, with regard to structures as well as attitudes.

The following section presents the obstacles and problems, related to the enforcement of the equality of persons with disabilities, which the Non-Discrimination Ombudsman has discovered through contacts, interest groups and reports. The highlighted topics include attitudes, the need for an accessible and available society, housing, electronic services, interpretation and public transport.

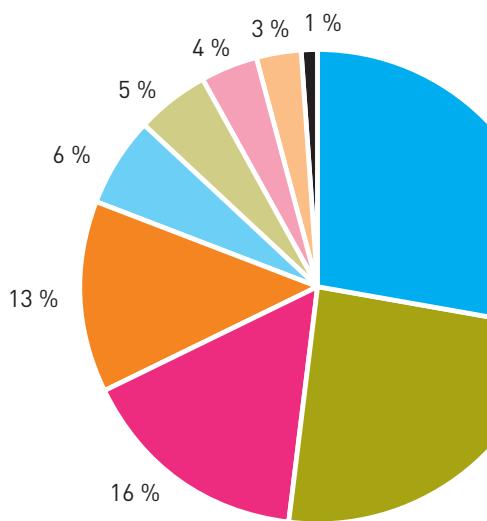
2.4.1. ATTITUDES AND STRUCTURES OBSTRUCTING EQUALITY

"I hope that in my lifetime persons with disabilities could live as equals among the so-called regular people. There is still a long way to go." This was the comment of a person interviewed for the report on discrimination prepared by the Non-Discrimination Ombudsman and the Ministry of Justice. The results of the report on the discrimination experienced by persons with disabilities in everyday life, conducted in 2016, provide a harsh perception of discrimination encountered by the persons with disabilities in Finland.

Based on the results of the report on the discrimination experienced by the persons with disabilities and the hundreds of complaints received by the Non-Discrimination Ombudsman it can be concluded that there is much work to be done to promote the inclusion and equality of persons with disabilities. The rights of the persons with disabilities are officially good in Finland, but there are problems in gaining access to these rights. The prevailing attitudinal climate is one essential factor behind the problems encountered by persons with disabilities.

"No one recognises that there exist disabled people with brains that could perform any sort of IT or sales work. It is a problem with the media, and perhaps more widely a problem of society, that disabled persons are narrowly perceived to be a certain kind only." – Person interviewed for the Report on the discrimination experienced by disabled persons in everyday life 2016

DISABILITY AS GROUND FOR DISCRIMINATION IN DIFFERENT AREAS OF LIFE 2017 (222 pcs)



- Other public services (61 pcs)
 - Other private services (54 pcs)
 - Social welfare and healthcare services (36 pcs)
 - Education/training (28 pcs)
 - Employment (14 pcs)
 - Housing (12 pcs)
 - Leisure time/
association activities (8 pcs)
 - Other (7 pcs)
 - Private and
family life (2 pcs)

For a long time, persons with disabilities were defined through medicine, and a disability was seen as a deviation from the “norm” and as a personal problem of the disabled individual. According to the social or societal model of disability, the problem lies with the society that creates and maintains disability with, for example, stereotypes, bias, and impediments to inclusion established in the society. Later on, the human rights model of disability has steered the discussion towards fundamental and human rights. The United Nations Convention on the Rights of Persons with Disabilities (later referred to as the UN Disability Convention) and the Optional Protocol entered into force internationally on 3 May 2008 and in Finland on 10 June 2016. The Convention contains universally recognised human rights that are customised to secure the de facto equality of persons with disabilities. For example, the concepts of accessibility, availability and reasonable accommodation are included in the scope of the Convention, as they are central elements in the enforcement of the equality of persons with disabilities.

The full and equal inclusion of persons with disabilities in the Finnish society cannot be developed or enforced without a significant change in attitudes. To improve the general attitudes, we need education in fundamental and human rights and the ability to understand the diverse nature of disability. It is often the case that persons with disabilities, alike accessibility and availability, are not acknowledged as part of individual and social diversity in a proactive manner during reforms of legislative projects, but perhaps at a later stage, if even then.

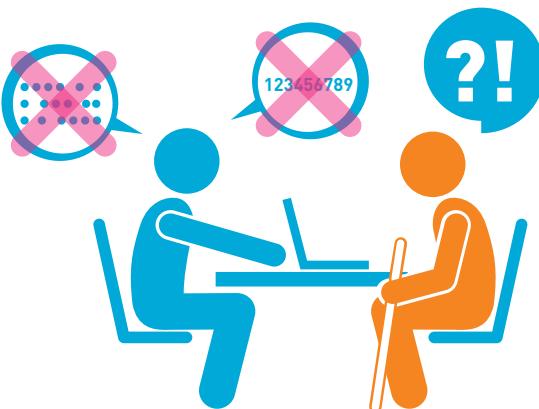
The objective should be that everyone would, in practice, have the same opportunities to act. For example, everyone must be able to rely on the Emergency Response Centre in case of an emergency. A person without disability can submit an emergency notification without any preparatory action if an emergency occurs. However, persons who are deaf, who have lost their hearing, or have a speech impairment must remember and know how to register as users every two years, before they can submit an emergency notification via a text message. In addition, the registration requires a strong electronic identification system, which some do not have.

Services and public events are still organised also in inaccessible facilities. Furthermore, there are problems in the availability of different services. For example, a person without disability can acquire tickets to public events easily and cost-effectively on the websites of ticketing agencies. However, this is not an option for persons using a wheelchair, if a wheelchair seat cannot be reserved through the online service. The Non-Discrimination Ombudsman is currently holding discussions with ticketing agencies and event organisers to amend the situation.

Persons with disabilities are entitled to equal participation in cultural life with others, and to enjoy the generally available services in an equal manner. In the spring of 2017, the Non-Discrimination Ombudsman prepared a recommendation for event organisers and ticketing agencies with the purpose of improving the accessibility of events. The recommendation addresses issues that have emerged in the contacts received by the Non-Discrimination Ombudsman and in discussions with ticketing agencies. The Non-Discrimination Ombudsman recommends that, for example, personal assistants would be allowed to attend events free of charge, the advance information of an event should also include instructions regarding accessible entrance, and wheelchair seats should also be available for purchasing online.

The enforcement of the rights and de facto equality of persons with disabilities under the UN Disability Convention requires active measures from the legislator, an understanding of the diversity of disability on the different societal levels, the conscious creation of an accessible and available society, and an interpretation of the law that is favourable to fundamental and human rights.

2.4.2. AN ACCESSIBLE, AVAILABLE AND EQUAL SOCIETY



An accessible society is a fundamental precondition for inclusion and equality. Design for all takes the needs of an aging population into account in a pre-emptive manner, and it benefits many different individuals in the event of, for example, illness, accident or parenthood. Accessibility and availability are not expensive when they are incorporated in the reform early on in the project. This requires a change in the attitudes, from the legislator, decision-makers and private operators alike.

Often it may seem to the main population that equality is well enforced, when, in reality, it is not. A society and its services have generally been built only for a portion of the population. However, it may be also a question of direct discrimination against persons with disabilities or a refusal of reasonable accommodation, rather than only a case of discrimination establishing itself in the structures over time.

The obligation to implement reasonable accommodation to enforce the equality of persons with disabilities, as laid down in the Non-Discrimination Act, was extended in the beginning of year 2015. Under section 15 of the Act, an authority, education provider, employer or provider of goods and services has to make due and appropriate adjustments necessary in each situation for a person with disabilities to be able, equally with others, to gain access to generally available goods and services. Reasonable accommodations are measures taken in concrete situations, used to secure the de facto equality of a disabled customer. Denial of reasonable accommodation is discrimination.

A common example of reasonable accommodation is assisting a disabled customer in a concrete situation, such as reading written documents to a customer with visual impairment or providing them with the text in a larger font size, installing a temporary slide for a customer using a wheelchair, or communicating in writing with a customer with impaired hearing. Reasonable accommodation differs from general accessibility measures. Temporary technical adjustments, made at the request of a person with disability, were highlighted also in the rationale of the Government proposal for Non-Discrimination Act. On the other hand, the rationale also states that, especially with regard to providers of goods and services with an extensive operating area, operators can, on the basis of general life experience, be required to possess a certain degree of preparedness for the most common adjustment situations. (HE 19/2014 vp, p. 81)

The UN Committee on the Rights of Persons with Disabilities, which monitors implementation of the Convention and examines individual complaints, has outlined the interpretation of reasonable accommodation in a way that is broader than what is indicated by the preparatory work on the Non-Discrimination Act. The National Non-Discrimination and Equality Tribunal and national courts have acknowledged in their decision-making the interpretation of the Disability Convention that is legally binding on Finland.

In its decision (31/2015), the National Non-Discrimination and Equality Tribunal found that a person with visual impairment had been discriminated against when a bank had refused the person online banking credentials on account of the person's visual impairment and had not implemented reasonable accommodation by providing the person with online credentials in Braille, for example. The decision is valid. The Tribunal also outlined (21/2015) that a TE office, which offers public employment and business services, had acted contrary to the Non-Discrimination Act when it had, upon deciding on a benefit laid down in the Unemployment Security Act, neglected the obligations under the Non-Discrimination Act to assess the need for reasonable accommodation when processing the application of a person with disability. The decision has been appealed.

The Supreme Administrative Court found in its Yearbook decision [KHO:2018:3] that a municipality had violated the law when it had refused to offer a free school meal, as required under the Basic Education Act, in liquid form in accordance with the needs of a person with disability. According to the Supreme Administrative Court, an education provider is obligated to arrange for any special diet made necessary by a pupil's physical condition or disability, and that the same is required by the prohibition of discrimination laid down in the Non-Discrimination Act. The Non-Discrimination Ombudsman submitted a statement to the Supreme Administrative Court in the matter.

According to the Regional State Administrative Agency of Southern Finland, a person was disregarded in the recruitment process for organising the archives of a city based on their short stature. The employer considered that the person in question would not have been able to work with sufficient speed. The applicant took the matter to court. The Kymenlaakso District Court (17/102322) found in its ruling in January 2017 that the perception of the applicant's slowness was based on a presumption. Although the working conditions as such may be an acceptable and weighty reason for not employing a person, the employer should have assessed the applicant's need of assistive devices or other potential accommodation measures prior to making the decision.

The aim of the Act on Services and Assistance for the Disabled [380/1987] is to promote the prerequisites of persons with disabilities to live and to interact with others as an equal member of society, and to prevent and remove obstacles and disadvantages caused by disability. Unfortunately, the Non-Discrimination Ombudsman receives contacts each month concerning refusal of disability services or dysfunctional practices existing in disability services. In such situations, the Ombudsman has very limited operating possibilities: the primary way of accessing one's rights is appealing a decision through the actual legal remedies.

The Non-Discrimination Ombudsman finds that being left without the necessary services laid down in the Act on Services and Assistance for the Disabled is a major impediment for the equality of a person with disabilities, and one in which the Government must intervene actively by securing adequate resources for the disability services.

2.4.3. HOUSING OF PERSONS WITH DISABILITIES

The Constitution provides individuals with the right to freely move within the country and to choose their place of residence. The competitive tendering of housing services and the resulting insecurity concerning the stability and actual ability of the service providers cause a significant risk to the equality, right of self-determination and personal freedom of disabled residents.

According to the legislation, municipalities do not have to conduct competitive tendering for the long-term care services for persons with disabilities. There is no compulsion to conduct a tendering process every few years or to tender for the lowest possible costs, and the municipalities can also produce the services independently. However, tendering does occur. Recurring changes in service providers hinder the possibilities of persons with disabilities to affect their living environment. Furthermore, the persons with disabilities have no say in whether their municipalities conduct tendering or not. The procurement of life-long services for persons with disabilities, including housing and interpretation services, shall not be left to the discretion of procurement units such as municipalities, counties, or, for example, the Social Insurance Institution. The service users' right of self-determination in said services must be legally secured by using, for example, customer vouchers or a personal budget, and by safeguarding a person with disabilities' right to choose another service provider in case there are problems related to the quality of the service. This matter calls for thorough examination, along with the citizens' initiative submitted to the Parliament for consideration.

In housing and built environments, Finland should adopt accessibility as the foundation in a broader sense than what the current legal provisions indicate to secure the de facto equality of persons with disabilities. In the summer of 2016, Finland ratified the UN Convention on the Rights of Persons with Disabilities. Just shortly before the Convention was ratified, the ministry requested opinions on draft regulation weakening the existing accessibility requirements on built environments. Although the decree was amended for the better, inaccessibility is still allowed as part of the built environment in, for example, new student housing facilities, of which only five per cent must be accessible.

The example above demonstrates that consideration given to the requirements laid down in the UN Disability Convention is, as of yet, insufficient. The European Union accessibility directive, possibly to be implemented in a few years, offers a significant opportunity for adopting an ambitious starting point for the enforcement of accessibility. We must establish the principle of an accessible and available society for all as the foundation for building our society. This calls for a significant change in the attitudes of the legislator and decision-makers in particular, and an understanding of the diversity of disability.

2.4.4. AVAILABLE ELECTRONIC SERVICES AND INTERPRETATION

Finland is rapidly becoming more and more digitalised. Electronic services create equal opportunities, but at the same time they expose certain groups to discrimination. The Non-Discrimination Ombudsman has received an increasing amount of contacts with regard to digitalisation. The concerns expressed in the contacts have regarded especially persons with sensory impairment, persons with neurological disabilities, and persons who, for some reason, are excluded from the electronic services, including a part of the elderly population and persons living below the poverty line. It is neither fair nor efficient to build services only for a certain part of the population.

The Web Accessibility Directive, or the European Union Directive (2016/2102) on the accessibility of the websites and mobile applications of public sector bodies, will be implemented during the year 2018. The new Directive enables substantial improvements in the accessibility of services. The broad national scope of the Directive increases general inclusion in the society.

At the moment, online banking credentials are the most commonly used tool for electronic identification in Finland. It is important that banks are aware of and comply carefully with the obligations laid down in 2017 concerning a customer's right to basic banking services. For example, banks must make reasonable adjustments on electronic identification services related to a person's account.

A complainant felt they had been discriminated against because a bank had refused them online banking credentials on account of their visual impairment and had not implemented reasonable accommodation. In its decision [31/2015], the National Non-Discrimination and Equality

Tribunal prohibited the bank from continuing or repeating discrimination against the complainant or other persons with visual impairment in the offering of banking services, and ordered the bank to implement the appropriate and necessary reasonable accommodation referred to in section 15 of the Non-Discrimination Act, so that persons with visual impairment can use banking services in banks equally with others, including obtaining online banking credentials. To enforce its prohibition decision and order, the Tribunal imposed a conditional fine of EUR 50,000.

2.4.5. ACCESSIBILITY IN MOVEMENT AND TRAVEL



Problems related to interpretation services provided for persons with hearing impairment, to deaf-blind persons, to sign-language speaking persons, and to persons with speech impairment have been increasingly topical since the service was transferred from municipalities to the Social Insurance Institution (Kela) in 2010. Disability organisations, customers, interpreting professionals and trade unions have criticised harshly the competitive tendering of interpretation services and the problems brought along by the Act on Public Procurement. Kela's latest tendering process in 2017 and the resulting difficulties have led to even qualified interpreters being excluded from the tendering. The adequate availability of qualified interpreters and their possibilities to maintain their professional skills as part of Kela's interpretation service is of vital importance, so that customers can be guaranteed top-quality services. It must be considered that a significant portion of all interpretation in the disability sector takes place under the Act on Interpretation Services (Act on Interpretation Services for Persons with Disabilities (133/2010)), id est within the scope of Kela's competitive tendering.

At the end of year 2016, the National Non-Discrimination and Equality Tribunal issued a decision (117/2016) in which it found that Kela had indirectly discriminated against a service user with hearing and visual impairment when Kela had neglected the customer's individual needs, but instead based the tendering process on the rigid minimum requirements set for interpreters. The requirements set for interpreters had led to the complainant not receiving any interpretation, despite the fact that a Portuguese-speaking interpreter would have been available. The matter was appealed to the Administrative Court of Helsinki. In her statement to the court, the Non-Discrimination Ombudsman concurred with the Tribunal's decision. The decision has been appealed.

The Disability Services Act guarantees a person with disability a certain amount of travels, but the Act alone is not capable of enforcing the de facto equality of a disabled person with regard to travel. The generally used public transport services should be available to all.

There are various actors operating in the transport sector, including the Finnish Transport Agency, the Finnish Transport Safety Agency (TrafI), VR and Helsinki Region Transport (HSL), who have overlapping responsibilities in the organisation of traffic. For example, with regard to railway transport there is no distinct party with an overall picture of or general responsibility for the form of transport in question. This fragmentation hinders the implementation of efficient measures to promote equality, and also complicates the examination of individual cases of suspected discrimination. The coordination of the equality impact and accessibility of transport should be, in a more explicit manner than currently, be imposed on a responsible authority, who would be in charge of an entity related to the equal rights of passengers.

Under section 5 of the Non-Discrimination Act, authorities are obligated to promote equality in a purposeful and systematic manner in all their activities. The equality impact of authority decisions, instructions and permit procedures pertaining to public transport shall be evaluated with a view to the enforcement of disabled passengers' rights, for example.

The joint municipal authority renewed the ticket reader devices in 2016. The touch-screen devices were, however, not accessible for passengers with visual impairment. The Non-Discrimination Ombudsman conducted negotiations with the joint municipal authority and the Finnish Federation of the Visually Impaired on how the joint municipal authority discharging a public duty shall solve the problem

in way that is efficient for the realisation of the right of disabled passengers. In October 2016, the joint municipal authority decided to relieve the visually impaired living in the area of purchasing a ticket, if their level of disability is over 50 per cent. In November 2017, the joint municipal authority extended this right also to persons living outside the area of the joint municipal authority. The decision will enter into force in the summer of 2018.

The termination of ticket sales in the commuter train services of the Helsinki region in the summer of 2017, and the reduction of conductor services in a part of the commuter train services, have been experienced as discriminating against the disabled and elderly passengers. Problems related to the movement of persons with disabilities can be found also elsewhere: Finland still has inaccessible platforms, long-distance bus transport in particular is still primarily inaccessible, or otherwise accessible train services are replaced with inaccessible bus connections during railroad construction work. All this creates inequality and obstructs the inclusion of a portion of the population.

Persons with disabilities need targeted measures to improve their equality and inclusion in the provision of goods and services and in employment. Action is required from several parties to ensure the realisation of movement, travel and, as a result, inclusion. Understanding the diversity of disability is a major step. It is equally important to understand that we need universal design, accessibility and availability in addition to targeted services and accommodations.

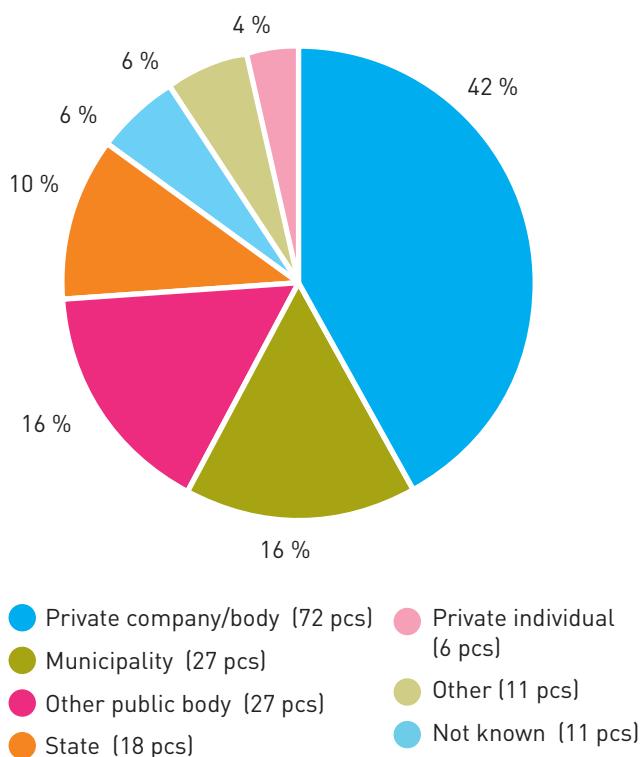
The Non-Discrimination Ombudsman asked the National Non-Discrimination and Equality Tribunal to investigate whether an airline company had discriminated against a person with a physical disability, when the company had not implemented reasonable accommodation referred to in the Non-Discrimination Act for a passenger in need of three adjacent seats on account of their disability. According to the Tribunal [102/2016], the fact that the customer would have to purchase the three adjacent seats constituted an unreasonable expense which, due to the price, excluded the person from the services entirely. The Tribunal found that the airline company had neglected to carry out reasonable accommodations and thus discriminated against the customer based on the customer's physical disability. The matter has been appealed.

2.5. STRONGER MEASURES NEEDED TO COMBAT DISCRIMINATION IN EMPLOYMENT

Employment discrimination means discrimination in the application process, recruitment, employment or termination of employment. Employment discrimination has many forms in Finland: a person is not invited to a job interview due to their name which creates a presumption of ethnic origin or minority background; a member of a minority is discriminated against by customers or colleagues; or accommodations needed by a disabled employee are not implemented in accordance with the person's needs. In a discriminatory situation the competence of an applicant or employee is defined by the prejudice of another person, instead of qualifications or experience.

The Non-Discrimination Ombudsman receives many contacts concerning employment discrimination (172 contacts/2017), despite the fact that the Ombudsman has only limited competence in issues of employment. In individual cases of employment discrimination, the enforcement of the Non-Discrimination Act is monitored by the occupational safety and health authorities. Occupational safety falls under the remit of the Regional State

DISCRIMINATION IN EMPLOYMENT AND THE OPPPOSING PARTY 2017 (172 pcs)



Administrative Agencies. However, the Non-Discrimination Ombudsman can promote equality in employment by assisting employers in the planning of promotive measures, by issuing recommendations, and by taking measures to reconcile individual cases of discrimination.

2.5.1. EMPLOYMENT DISCRIMINATION IS AN INTERNATIONALLY SIGNIFICANT PROBLEM

Discrimination in employment is a significant problem on the international level. The importance of preventing employment discrimination has been highlighted in several international treaties in addition to the EU Employment Equality Directive (2000/78/EY). These include the UN Convention on the Rights of Persons with Disabilities (CRPD), The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the International Labour Organization ILO's Convention (111/1958) Concerning Discrimination in Respect of Employment and Occupation. The Employment Equality Directive creates a common framework for preventing discrimination and promoting equal treatment in employment in the member states, in spite of religion, belief, disability, age or sexual orientation. In addition, the EU Anti-Racism Directive (2000/43/EY) prohibits discrimination in working life based on ethnic origin.

Employment discrimination is a very common reason for contacting the authorities monitoring the prohibition of discrimination in the EU member states. According to the data of the European Network of Equality Bodies, Equinet, almost all authorities combating discrimination in the EU member states have a mandate that covers a wide variety of grounds for discrimination, also in employment. The Finnish authorities who intervene in employment discrimination are the Ombudsman for Equality in cases of discrimination based on gender, gender identity and pregnancy, and the occupational safety and health authorities.

Finland deviates from the other European states in that the special authority combating discrimination – the Non-Discrimination Ombudsman – has not been authorised to express an opinion on individual cases of employment discrimination. The Non-Discrimination Ombudsman has always viewed this solution as problematic.

The Non-Discrimination Ombudsman's exceptionally narrow competence in employment has also raised the question of whether Finland is in this regard in full compliance with the requirements of the directives related to discrimination. On these grounds, the European Commission launched in 2015 an infringement procedure against Finland for violating the directives, and took the matter to the Court of Justice of the European Union. The Commission withdrew its complaint when Finland announced it would increase the Non-Discrimination Ombudsman's operating possibilities. However, the addition did not change the fundamental issue of competence.

2.5.2. RESEARCH DATA ON EMPLOYMENT DISCRIMINATION

According to a survey on discrimination experienced by LGBT people in the EU member states, published in 2012 by the European Union Agency for Fundamental Rights, 15 per cent of the Finnish respondents had experienced employment discrimination during the last 12 months due to their sexual orientation, gender identity, or gender expression. With regard to applying for a job, 8 per cent said they had encountered discrimination in the last 12 months. Out of all the individuals in the survey who had encountered discrimination in any area of life, only 7 per cent had reported the latest discriminatory experience. According to the respondents, they did not report the discrimination because it would not result in anything for the following reasons: discrimination occurs constantly (56 %); nothing would change anyway (55 %); the incidence would not be taken seriously (36 %); they did not know how or where to report (33 %); and they did not want to reveal their sexual orientation or gender identity (31 %).

According to the results of the survey on Roma's experiences of discrimination, published in 2014 by the Ombudsman for Minorities, 53.8 per cent of the Roma respondents had experienced discrimination in the last five years when applying for a job. Only a little over 10 per cent of those who had encountered discrimination when applying for work reported the incidence. Based on the customer work of the Ombudsman for Minorities, and now the Non-Discrimination Ombudsman, it is obvious that strong prejudices exist among the majority population against the Roma.

According to the report on the discrimination experienced by persons with disabilities in everyday life, published in 2016 by the Non-Discrimination Ombudsman, 35.4 per cent of the respondents had experienced discrimination in recruitment during the last 12 months. In the last five years, 41.2 per cent of the respondents had experienced discrimination in employment. According to the report, only 10 per cent of respondents who had encountered discrimination in recruitment had reported the incidence. The most common reason for the respondents not reporting cases of discrimination was that they did not believe it would result in anything. The second most common reason was fear of not being taken seriously. Furthermore, incidences of discrimination were not reported because the discrimination was not severe enough, or it had not occurred to the victim to report the incidence.

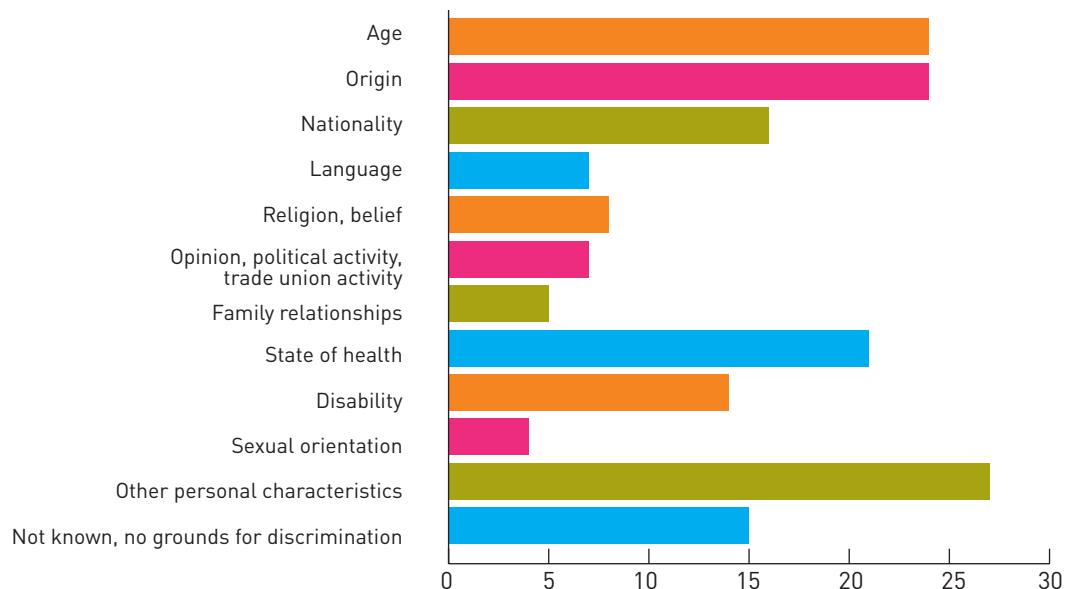
Published in late 2017, the EU MIDIS II survey studied discrimination experienced in Finland by persons of Sub-Saharan origin. Of these persons, 45 per cent has encountered discrimination in Finland in the last year. 16 per cent had experienced discrimination in recruitment and 12 per cent in employment in the last year.

Underreporting. All incidences of employment discrimination are not reported to the authorities. The occupational safety and health division of the Regional State Administrative Agency of Southern Finland has received

seven contacts in writing concerning discrimination based on disability in 2016 and five contacts in writing in 2015. In 2016, 13 cases in writing were initiated based on origin, language, nationality or religion, and in 2015 matters concerning origin, language and nationality constituted 44 cases in writing. In 2016, two cases in writing in the occupational safety and health division from sexual orientation, and one case in 2015. The national figures of 2017 regarding contacts based on employment discrimination were also available. According to the 2017 data, there were six contacts in writing the national level based on disability, and 24 based on origin, language, nationality or religion. There were no contacts based on sexual orientation.

Employment discrimination occurs in Finland, and it is directed at both the majority population and minorities. In the light of the figures and reports presented above it is apparent that a part of the employment discrimination remains unrevealed. Underreporting and insufficient access to individual rights seem to be highlighted in employment discrimination against the minorities, in particular. When discrimination is not reported, it cannot be tackled. Therefore, the individual is not able to access their rights and, at worst, the discrimination continues. In Finland, many employees who have experienced discrimination reconcile the matter with the employer through labour market organisations. Almost all reconciliation agreements are made confidential. In such cas-

CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN: EMPLOYMENT ACCORDING TO GROUNDS FOR DISCRIMINATION 2017 (172 pcs)



es, information regarding the discrimination or whether the employee received appropriate compensation does not spread further. The incomplete overall view of discrimination also hinders the appropriate targeting of preventive measures against discrimination. To make people see the benefits of reporting discrimination, the authorities should increase communication concerning legal remedies and positive precedents. Good experiences of encounters with authorities strengthen people's confidence in that their experiences will be taken seriously.

2.5.3. INTERVENING IN EMPLOYMENT DISCRIMINATION

The supervisory power concerning employment discrimination is distributed to different authorities. In addition, trade unions provide assistance to victims of employment discrimination. The OSH authority monitors the prohibition of discrimination at the initiative of a client, as well as in connection with authority-initiated employment inspections. If a matter gives rise to a probable cause to suspect employment discrimination, the OSH authority will report the offence to the police for preliminary investigation. The customers of OSH are, when necessary, informed of the possibility to claim compensation or damages under the Non-Discrimination Act. The customers are also informed of the competence of the Non-Discrimination Ombudsman to assist victims of discrimination.

The competence of the OSH authority does not include the reconciliation of disputes, claiming compensation or damages for discrimination as referred to in the Non-Discrimination Act, or representing an employee in a dispute case. [Monitoring of prohibition of discrimination in Southern Finland in 2016; Ministry of Social Affairs and Health Guidelines on occupational safety and health enforcement 1/2016] In this respect, the Non-Discrimination Ombudsman has wider possibilities than the OSH authority, as also required by the European Union directive, to assist victims of discrimination in accessing their rights.

The Ombudsman for Equality, who monitors and promotes gender equality, can intervene in discrimination also in employment. Approximately half of customer contacts received by the Ombudsman for Equality concern employment discrimination. In addition to intervening in individual cases of discrimination, the Ombudsman for Equality has implemented different campaigns, for example, against discrimination based on pregnancy.

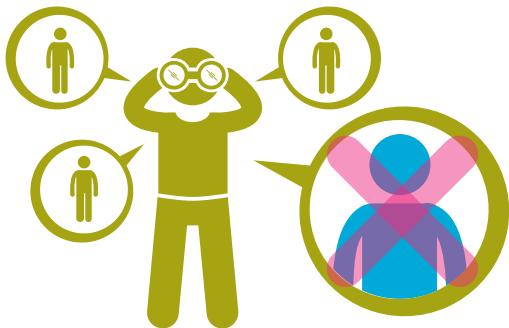
The Non-Discrimination Ombudsman is authorised to promote equality in employment in general, but not to intervene in an individual case of discrimination. The Ombudsman may not express an opinion on whether or not the prohibition of discrimination, laid down in the Non-Discrimination Act, has been complied with in individual cases of employment discrimination. The Ombudsman does, however, have the right to promote conciliation also in individual employment cases.

The power of monitoring employment discrimination overlaps between the Non-Discrimination Ombudsman and the OSH authorities in recruitment related to hired labour, and drawing the line has proven challenging when considering the legal protection of individuals. In practice, this has led to a situation where the Ombudsman must, in certain situations, express her opinion also on individual cases of employment discrimination, which was not understood during the legislative reform.

The OSH authorities can only monitor a company employing hired labour when the company is using its right of supervision and surveillance on the hired labour force. In other cases, the supervision of the user company, i.e. the company in need of employees, falls under the remit of the Non-Discrimination Ombudsman. Such an instance could occur, for example, in recruitment, if a user company has outsourced the recruitment process to a staffing agency but an applicant is not chosen due to conditions or instructions, set by the user company, that are suspected of being discriminatory. In such an event, the staffing agency is monitored by the OSH authority, whereas the user company is monitored by the Non-Discrimination Ombudsman.

There are overlaps in the distribution of competence also in situations, where an occupational health physician issues a statement concerning an applicant's eligibility as a part of the recruitment process. If discrimination is suspected in such a case, proceedings of the employer are supervised by the OSH authority and the occupational health services are monitored by the Non-Discrimination Ombudsman, as under the Occupational Health Care Act the personnel of occupational health care services must be professionally independent of the employers.

2.5.4. DISCRIMINATION IN APPLYING FOR WORK



Discrimination related to applying for work is one form of employment discrimination. Studies (for example, Ministry of Economic Affairs and Employment, [Discrimination in the Finnish Labor Market](#), 2012) show that discrimination in recruitment is deemed particularly detrimental to society, and intervening in it is seen as difficult.

The Ombudsman attempted, without success, to promote conciliation in an employment case concerning discrimination based on religion. The objective was to establish an employment relationship and claim compensation. A city's housing production agency had, without an appropriate reason, decided not to employ a Muslim engineer who had already been chosen for the task, because it became apparent that if the work tasks would allow it, the engineer wanted to use their meal break to participate in the Friday Prayer. The Regional State Administrative Agency that investigated the matter at the Ombudsman's request found in its inspection report that the employer has not demonstrated that the decision of not employing the person selected for the task would have been appropriate and necessary. Ergo, the applicant had been indirectly discriminated against based on their religion. The report also stated that the employer's conduct in the recruitment process indicates that there are development needs at the employment with regard to the enforcement of de facto equality, and that the employer had not demonstrated compliance with the obligation of promoting equality, laid down in section 7 of the Non-Discrimination Act. The implementation of equality had not been assessed at the employment with regard to the different grounds for discrimination. The police has conducted a preliminary investigation in the matter, and, according to information available in February 2018, the matter has been transferred for consideration of charges as a case of suspected employment discrimination.

One way of clearing out recruitment discrimination and cases of suspected discrimination is to inform the suspecting applicant of the grounds on which the recruitment process was carried out. In public administration, this is implemented in the statements of the appointment documentation prepared for all appointments to office. Through the reform of the Non-Discrimination Act, private employers were also imposed with a duty to report the grounds for recruitment, but only if a person with disability feels they have been discriminated against in recruitment on account of a refusal to implement reasonable accommodations. Similarly, the Equality Act has long included an identical assessment obligation imposed on employers, when discrimination is suspected to be related to gender. Along with these statutes, the majority of recruitment events already fall within the scope of the assessment duty.

During the consideration of the Non-Discrimination Act, the Constitutional Law Committee of the Parliament found it important to extend the obligation of reporting also to other cases of suspected discrimination in addition to those related to disability (PeVL 31/2014vp p. 10). According to the Constitutional Law Committee, “only after receiving the employer’s report the employee suspecting discrimination can evaluate if discrimination has taken place and whether or not there are grounds for taking measures to bring the matter to the appropriate authorities for investigation.” The Non-Discrimination Ombudsman finds that harmonising the Act with regard to the different grounds for discrimination would clarify the process of intervening in recruitment discrimination.

The Non-Discrimination Ombudsman deems it important that a job applicant would in all situations have the possibility of receiving a report from the employer concerning the grounds on which the recruitment selection has been made.

2.5.5. HARMONISED LEGAL PROTECTION FOR EMPLOYMENT

The Non-Discrimination Ombudsman's insufficient competence in expressing an opinion on individual cases of employment discrimination and, furthermore, exploring the issues of employment discrimination more thoroughly, also hinders the Ombudsman's possibilities of promoting equality in employment through initiatives or campaigns. The Non-Discrimination Ombudsman's du-

ties include publishing reports and issuing recommendations, also with regard to equality in employment. These duties would be easier to perform, if the Ombudsman would have the right to examine employment discrimination more thoroughly by investigating actual cases of discrimination.

As a way of better intervening in employment discrimination it has been proposed that the Non-Discrimination Ombudsman, similarly to the Ombudsman for Equality, should have the possibility to issue her assessment on cases of employment discrimination. The Ombudsman's evaluations of discrimination are not legally binding in any area of life, but the work of the Non-Discrimination Ombudsman has shown that they are a good low-threshold legal remedy, also in employment, for tackling discrimination and negotiating reconciliation between parties.

Increasing the similar competence imposed on the Non-Discrimination Ombudsman would complete the legal protection of individuals. By requesting the Non-Discrimination Ombudsman for an assessment of discrimination, a person would get a quick evaluation of the feasibility of their case from the perspective of the Non-Discrimination Act, as well as guidance related to expense risks, different procedure alternatives, and measures for intervening in discrimination. Increasing the Ombudsman's competence would remove ambiguities on which authority can intervene and how in special issues, such as those related to hired labour, recruitment and trainees. The Non-Discrimination Ombudsman has a broad variety of measures for promoting equality and tackling discrimination. Information of individual cases of employment discrimination would enhance the Ombudsman's efforts to eradicate employment discrimination, similarly to other areas of life.

From an individual's perspective it would be clearer, if the Non-Discrimination Ombudsman would have full competence in employment discrimination, alongside the Regional State Administrative Agencies. This would clarify the legal protection of individuals with regard to employment discrimination, and harmonise the competence of the Ombudsman for Equality and the Non-Discrimination Ombudsman. It would be appropriate that a person suspecting discrimination could still use their discretion to decide if they want to rely on the regional-

ly extensive service network of the OSH authorities, or submit their matter to the Non-Discrimination Ombudsman for processing.

Extending the Ombudsman's operating possibilities would substantially support the Ombudsman's general task of promoting equality in employment. In its statement on the matter (PeVL 31/2014 vp p. 10), the Constitutional Law Committee has found that "excluding the monitoring of employment equality and discrimination issues from the remit of the Non-Discrimination Ombudsman is problematic from the point of view of consistent supervision of the law and the status of the Non-Discrimination Ombudsman, considering that employment is an essential area of application of the Non-Discrimination Act." The Employment and Equality Committee has also stated in its report (TyVM 11/2014 vp) that it "finds the distribution of competence problematic due to the fact that the OSH authorities are not specialists in issues of fundamental and human rights, in contrast to the Non-Discrimination Ombudsman."

The Non-Discrimination Ombudsman finds that to strengthen the legal protection of victims of discrimination, the Non-Discrimination Ombudsman should, in addition to the occupational safety and health authorities, be authorised to assess also discrimination occurring in employment.

2.6. OTHER DEVELOPMENT NEEDS CONCERNING THE NON-DISCRIMINATION ACT

The Non-Discrimination Act provides the Ombudsman with extensive authority and several different and appropriate instruments for intervening in discrimination. However, the reform of the Act introduced an unexpected obstacle to her work. In contrast to before, the Non-Discrimination Ombudsman cannot bring a discrimination case to the National Discrimination and Equality Tribunal without a designated victim.

The current Non-Discrimination Act has now been in force for just over three years. In this time, only a minor amount of discrimination cases have been brought to the general courts as civil actions. Cases concerning discrimination have primarily been processed by the National Non-Discrimination and Equality Tribunal, and

some of the Tribunal's decisions have been appealed to the Administrative Court. In addition, crimes related to discrimination have been processed in general courts in criminal proceedings. Victims do not dare take cases of suspected discrimination to a court as civil actions, as such procedure always includes the risk of having to pay for the opposing party's legal expenses. In practice, this often stops the victim from claiming compensation for experienced discrimination as laid down in the Non-Discrimination Act.

2.6.1. DISCRIMINATION WITHOUT A VICTIM TO THE NATIONAL NON-DISCRIMINATION AND EQUALITY TRIBUNAL

The non-discrimination legislation and the underlying EU directives are based on the idea that the victims of discrimination need support to intervene in the discrimination. For this purpose, the directives include an obligation to establish an authority, such as the Non-Discrimination Ombudsman, whose duties would include supporting victims of discrimination in tackling the discrimination. One of the central operating possibilities of the Ombudsman for Minorities was taking a matter of suspected discrimination to the National Non-Discrimination Board for processing. However, the current

Non-Discrimination Act appears to have unexpectedly weakened the Non-Discrimination Ombudsman's possibilities of intervening in discrimination.

During the reform of the Non-Discrimination Act, the Non-Discrimination Ombudsman's possibilities of taking matters to the National Non-Discrimination and Equality Tribunal for handling were extended to cover all grounds for discrimination and all areas of life, with the exception of employment. In addition, the provisions of the Non-Discrimination Act on the competence of the Ombudsman to take a matter related to discrimination to the Tribunal for handling were changed. Under the current law, the Non-Discrimination Ombudsman cannot take to the Tribunal for processing a case of discrimination, in which there is no identified victim of discrimination. Such distinctly discriminatory events include, for example, discriminatory job advertisements and discriminatory instructions. A need to intervene in discrimination even before it is directed at an individual has been acknowledged in European case law. In a ruling (Firma Feryn, C-54/07) of the Court of Justice of the European Union it is found that even an employer's notification of not employing persons representing certain ethnic origins constitutes direct discrimination in recruitment. The Court

The Non-Discrimination Ombudsman does not issue legally binding decisions. The Non-Discrimination Ombudsman can intervene in discrimination by, for example, providing counselling, requesting clarifications, and promoting conciliation.



found that the existence of such direct discrimination is not dependent on the identification of a complainant who claims to have been the victim of such discrimination.

When a matter cannot be taken to the Tribunal without an identified victim, it affects the possibilities of preventing discrimination by intervening in discriminatory practices even before they are directed at individual persons. These matters may involve, for example, already existing discriminatory instructions or a discriminatory job advertisement. Sometimes persons who report a case of suspected discrimination to the Non-Discrimination Ombudsman feel that they themselves cannot raise a matter of discrimination due to a fear of stigma, victimisation or hate speech. Under the previous version of the Non-Discrimination Act, the Ombudsman for Minorities could bring discriminatory action as an issue of principle to the Tribunal for evaluation, without having to divulge the name of a potential victim or the person suspecting discrimination. The requirement of an identifiable complainant is problematic, especially in harassment cases.

Based on the previous Act and the Government proposal, the Non-Discrimination Ombudsman has taken cases to the National Non-Discrimination and Equality Tribunal without an identifiable victim. However, the Tribunal has found, due to the formulation of the Act, that the Ombudsman may not bring a matter to the Tribunal in such situations. Therefore, no decision has been issued by the Tribunal in, for example, a case where a gym clearly indicated in a public statement that asylum seekers are not welcome as customers of the gym. At the time, the Non-Discrimination Ombudsman was not aware of any individual asylum seeker who would have applied for membership at the gym after the statement.

The Non-Discrimination Act underwent a long preparation process. In no point of the preparation process did it transpire that the purpose would have been to weaken the possibilities of intervening in discrimination in this manner. In the Government proposal (HE 19/2014vp) serving as foundation for the Non-Discrimination Act it is specifically noted that "the right of the Non-Discrimination Ombudsman to bring a matter concerning discrimination or victimisation to the Tribunal for processing shall be identical with section 15(1) of the (previous) Non-Discrimination Act." In addition, section 1 of the Non-Discrimination Act specifically lays down that the

purpose of the Non-Discrimination Act is to enhance the protection provided by law to those who have been discriminated against. On these grounds, the Non-Discrimination Ombudsman finds that there has been a mishap in this regard in the drafting of the Non-Discrimination Act, and this accident is obstructing the promotion of equality.

The Non-Discrimination Ombudsman deems it important that the Non-Discrimination Ombudsman would be re-invested with the possibility of bringing a case concerning discrimination to the National Non-Discrimination and Equality Tribunal, also without an identifiable victim.

2.6.2. EXPENSE RISK WEAKENS LEGAL PROTECTION IN RECEIVING COMPENSATION

To prevent discrimination, discrimination must be tackled and there must be consequences for discriminatory action. By virtue of the EU directives, these consequences must be “efficient, proportionate and cautionary”. However, neither the Non-Discrimination Ombudsman nor the National Non-Discrimination and Equality Tribunal is authorised to order compensation to be paid for the victim.

Ultimately a victim of discrimination must bring a separate civil action to a general court to claim compensation. In practice, this means either using general legal aid or acquiring a private attorney. A more significant risk to the realisation of rights is the risk of having to pay the opposing party's legal expenses, if the discrimination cannot be demonstrated in court. The risk of legal expenses practically stops a victim from bringing a matter to court and, therefore, from claiming compensation under the Non-Discrimination Act for the occurred discrimination. This is a significant deficiency in the legal protection provided under the Finnish non-discrimination legislation.

In practice, the strict time limits for litigation are a significant factor in preventing individuals from taking legal action. If a victim wishes to minimise the expense risk by initially requesting an opinion from the Non-Discrimination Ombudsman and/or the National Non-Discrimination and Equality Tribunal on the existence of discrimination in their case, there is often very little time left in the two-year time limit set for claiming compensation. For example, the Non-Discrimination Ombudsman has

submitted five cases to the National Non-Discrimination and Equality Tribunal. The consideration of each of these cases in the Tribunal has taken a minimum of one year.

The fact that the National Non-Discrimination and Equality Tribunal is not authorised to order compensation was acknowledged also by the Constitutional Law Committee in its statement (PeVL 31/2014vp) regarding the reform of the Non-Discrimination Act. The Constitutional Law Committee stated that “victims of discrimination should have access to low-threshold legal channels through which the matter could be investigated and potential compensation ordered, without high expense risks and long processing times.” The Committee deemed it important to assess the possibility of processing compensation issues in the National Non-Discrimination and Equality Tribunal. The Employment and Equality Committee (TyVM 11/2014 vp) has also found that the National Non-Discrimination and Equality Tribunal is an essential low-threshold legal remedy, which from the viewpoint of state finances is also more appropriate in comparison to legal proceedings, ergo the ordering of compensation in the Tribunal must be investigated.

The Non-Discrimination Ombudsman deems it important that the National Non-Discrimination and Equality Tribunal is given the right to order compensation to be paid to victims of discrimination.

2.7. CONCLUSIONS AND RECOMMENDATIONS

This report has in many ways highlighted the significant relevance that the non-discrimination legislation, reformed in 2015, has on improving equality. The central purpose of the Act, enhancing the legal protection of individuals, was improved in many respects. The Non-Discrimination Act provides strong protection against discrimination and a varied range of measures for intervening in discrimination and promoting equality. The Act provides the Ombudsman with extensive authority and several different and appropriate instruments for intervening in discrimination in different areas of life, such as in education, services and housing. The Non-Discrimination receives complaints based on all the grounds for discrimination laid down in the Non-Discrimination Act. The number of complaints has increased significant-

ly each year. The Non-Discrimination Ombudsman can intervene in discrimination experienced by individuals at a low threshold and promote equality in a less drastic way in comparison to a legal process.

Anyone can be discriminated against. Studies show that discrimination is more often experienced by members of minorities. A major part of discrimination remains unrevealed. Discrimination is also expensive to the society, when the skills of an individual are not exploited in, for example, employment, due to discrimination. It is important that victims of discrimination or persons suspecting discrimination know who to contact to investigate the matter further. The Non-Discrimination Ombudsman increases awareness of herself through versatile communication.

Already during the consideration of the Non-Discrimination Act in Parliament there emerged some development needs, which the Constitutional Law Committee and the Employment and Equality Committee deemed important to examine further (PeVL 31/2014 vp, TyVM 11/2014 vp). These included, among others, extending the Non-Discrimination Ombudsman's competence to cover individual cases of employment discrimination, and ordering compensation in the National Non-Discrimination and Equality Tribunal. Based on the experiences accrued during the Non-Discrimination Ombudsman's first three years of duty, it is justified to continue developing the Act to improve the legal protection of individuals so that the Ombudsman would be authorised to assess employment discrimination, as well. Similarly, the Ombudsman should be re-invested with the possibility of bringing a discrimination matter to the National Non-Discrimination and Equality Tribunal without an identifiable victim, and the National Non-Discrimination and Equality Tribunal should be given the authority to order compensation to be paid to a victim of discrimination.

Creating an equal society requires systematic and long-term reform measures. Eradicating structural discrimination requires changes in legislation, attitudes and authority procedures. Legislation already provides good instruments for promoting equality. It obliges authorities, education providers, educational institutions and employers to promote equality and draft a concrete equality plan. Equality thinking must be established as part of all operations in authorities, employment as well as ed-

ucational institutions. As early childhood education and care services develop, it is justified to extend the obligation to promote equality also to the providers and units of early childhood education and care.

School is an essential environment in a child's life. The Sámi children have also the right to high-quality teaching in their native language. The resources and conditions for teaching must be secured in the Sámi Homeland and, whenever possible, also outside the Homeland area. The enforcement of the equality and inclusion of sign-language speaking persons requires them to learn their own language. The right of sign-language using children to their own language shall be secured in legislation.

One of the largest national administrative reforms is taking place next year. Along with the regional government reform, the counties, as authorities, must take their duty to promote equality seriously and acknowledge it in advance in all their activities. The assessment of equality impacts must be incorporated in bill drafting, as well as on the different administrative levels.

Equality means also inclusion and a person's versatile opportunities to act in a society. The general attitudinal atmosphere has a significant impact on an individual's experience of inclusion. Racist speech, hate speech and harassment have become more commonplace in Finland. Neither the freedom of speech nor the freedom of assembly give a person the right to violate the dignity of another individual. The prohibition of harassment laid down in the Non-Discrimination Act is one measure for intervening in hate speech, in addition to the Criminal Code. Authorities must exploit the instruments for tackling hate speech and harassment efficiently. Fundamental and human rights education supports the understanding of diversity, as well promotes a better understanding of one's own rights and those of other persons.

An accessible society is a fundamental precondition for inclusion and equality. The self-determination right of persons with disabilities must be respected, and their equality must be enforced, both in structures and in attitudes. The construction of society must be based on the idea of an accessible and available society for all. This calls for a significant change in the attitudes of the

legislator and decision-makers in particular, and an understanding of the diversity of disability. Design for all takes also the needs of an aging population into account, and it benefits many different individuals in the event of, for example, illness, accident or parenthood. The UN Convention on the Rights of Persons with Disabilities calls for an accessible society, and this requirement must be implemented efficiently.

The Non-Discrimination Ombudsman proposes the following to the Parliament:

RECOMMENDATION 1: INITIATING A PARTIAL REFORM OF THE NON-DISCRIMINATION ACT

To strengthen the legal protection of victims of discrimination, the Non-Discrimination Ombudsman should, in addition to the occupational safety and health authorities, be authorised to assess also discrimination occurring in employment.

The Non-Discrimination Ombudsman should be re-invested with the possibility of bringing a case concerning discrimination to the National Non-Discrimination and Equality Tribunal also without an identifiable victim.

The National Non-Discrimination and Equality Tribunal should be given the right to order compensation to be paid to victims of discrimination.

The (in)action of an educational institution should constitute discrimination, if the institution does not intervene in discrimination against a pupil or student.

A unit-specific obligation should be laid down for early childhood education and care units to promote equality and prepare an equality plan, in the same way as for educational institutions.

A job applicant should in all situations have the possibility of receiving a report from the employer concerning the grounds on which the recruitment selection has been made.

3. Status and rights of foreign nationals in Finland

In the operation of the Non-Discrimination Ombudsman, different competences intersect in matters related to foreign nationals. Foreigners, and asylum seekers in particular, have less knowledge of the Finnish society and their rights, and partially for this reason they have an increased need of legal protection.

According to the Government's preliminary work (HE 19/2014), the duties of the Non-Discrimination Ombudsman comprise monitoring the conditions, status and rights of foreign nationals and ethnic minorities as well as other groups at risk of discrimination; promoting the equality of these groups; and preventing discrimination. A foreign national can be discriminated against on the basis of his/her nationality, language or origin, in which case the Ombudsman can take on the foreigner's matter as a measure of promoting equality and intervening in discrimination. As the National Rapporteur on Trafficking in Human Beings, the Ombudsman monitors phenomena related to human trafficking. The majority of the victims of human trafficking identified in Finland are foreign nationals, which is why the action against human trafficking is related to different issues of alien legislation. The Non-Discrimination Ombudsman also monitors the enforcement of the removal from the country and ensures that the process is in compliance with regulations and respects fundamental and human rights.

In the opinion of the Non-Discrimination Ombudsman, the development that has taken place during the last three years, particularly considering the position and right of asylum seekers, has been undesirable. In 2015, the number of asylum seekers entering Finland was multiplied in comparison to the previous years. In the following years, the numbers returned back to the level of the previous years. Finland replied to the exceptional situation by tightening up legislation and procedures in accordance with the Government action plan on asylum policy. Government's objectives included, among others, bringing asylum costs under control and reducing the attractiveness of Finland as a receiving country for asylum seekers.

As a result of the legislative amendments and tightened practices, the position of asylum seekers has become significantly more difficult. Appeal times in asylum matters have been reduced, the right to a legal aid counsel has been restricted, the grounds for a leave to appeal to the Supreme Administrative Court have been tightened, the

principles of remuneration to legal aid counsels have been altered, and the right to reception services has been diminished. In the absence of adequate basic public services, the termination of reception services after a negative asylum decision has increased the risk of asylum seekers of falling victim to exploitation and even human trafficking.

The amendments as a whole seem to have created disproportionate consequences for individuals. Finland has been imposed with an alien two-tier system where the level of legal protection is weaker in asylum matters than in other matters.

The tightened asylum policy and the related authority operations seem to have led to end results that are difficult to justify, both from the perspective of the individual and the society. Some of the asylum seekers whose application has been refused have obtained a job or started a family in Finland. Nevertheless, persons awaiting a decision on their work permit or investigation of family ties have been removed from the country. As the population ages, Finland needs foreign labour force.

The Non-Discrimination Ombudsman considers that from the perspective of need of labour force and, on the other hand, of a company that has already employed a person and provided them with work orientation, it would be more cost-effective, in comparison to expensive return processes, if an employed person could apply for a work permit and wait for the decision in Finland. In addition, each person's right to family life must be respected, and they must be granted the possibility of having the impact of family ties in their residence rights investigated before enforcing the decision to remove the person from the country.

The Faculty of Law of the University of Turku, the Institute for Human Rights at Åbo Akademi University and the Non-Discrimination Ombudsman have conducted a pilot study on the decisions of the Finnish Immigration Service concerning international protection in 2015–2017. This report presents the central findings and conclusions of the study. The study shows that the interpretation of the law has changed. Significantly fewer asylum seekers received protection in 2017 than in 2015. It arises from the material as an explanatory factor that, during the latter period, the authorities found all the fewer asylum seekers to have credible grounds for their applications.

Enforcement of the removal from the country and the monitoring of said enforcement have received more and more publicity, as the number of returns increased in 2017. As the returns become reality it is understandable that people become increasingly concerned for the returned person and their wellbeing. Enforcing the deportation decision is, however, the last phase of a long asylum process. The focus of the Non-Discrimination Ombudsman's monitoring and influencing task is ensuring that the enforcement is conducted in compliance with the regulations and fundamental and human rights. The Ombudsman is not authorised to intervene in the enforcement of deportation. The purpose of supervision is to influence the future return proceedings and the structures and procedures used in removals from the country.

The acceptability of the asylum process is based on the early stages: unbiased, thorough examination of the matter, and a legally sound, well justified decision. If confidence in the decision-making process falters, the legitimacy of enforcing decisions made in the process becomes questionable, as well.

3.1. CHANGES IN THE POSITION OF FOREIGN NATIONALS HAVE WEAKENED LEGAL PROTECTION

In the last three years, the Non-Discrimination Ombudsman has observed faults in, for example, the realisation of asylum seekers' legal protection, family reunification, and consideration of the best interests of a child in decisions concerning foreign children. In addition, there appear to be shortcomings in the identification of especially vulnerable asylum seekers and in providing them with appropriate assistance. The Non-Discrimination Ombudsman has reached this conclusion on the basis of several contacts regarding the enforcement of the rights of foreign nationals.

The Ombudsman's work related to the position and rights of foreign nationals consists of processing individual complaints, as well as of promoting the full enforcement of the rights of foreign nationals on a more general level. In many cases regarding the enforcement of the rights of a foreign national, a positive outcome is reached through negotiations with both parties. However, not all cases are resolved this way. There is much room for improvement, especially with regard to the status of asylum seekers.

3.1.1. IDENTIFICATION OF AND SUPPORT FOR VULNERABLE ASYLUM SEEKERS

There are many factors of uncertainty in the life of asylum seekers. They have left their country of origin often because of persecution or conflicts. In many cases, they have been forced to leave all their belongings behind and live separated from their families for a long time, in an unfamiliar linguistic and cultural environment. Receiving international protection in an alien state is not self-evident. Therefore, asylum seekers as a group can already be deemed to be in a less favourable position.

The discussion of vulnerability in this chapter refers to asylum seekers who are in a particularly vulnerable position based on their experiences or characteristics. These individuals include, for example, persons with disabilities, children, the elderly, members of sexual and gender minorities, and asylum seekers who have fallen victim to torture, violence or human trafficking.

The weakening of legal protection has hindered the identification of persons in a vulnerable position and providing them with appropriate support and services. The obligation to identify vulnerable persons is provided in, for example, the directive laying down standards for the reception of applicants for international protection (2013/33/EU, later referred to as the Reception Conditions Directive). The Non-Discrimination Ombudsman has been informed of several cases where a person's vulnerability has not been identified until after the process or at a very late stage. These cases have involved especially victims of sexual violence or torture, victims of human trafficking, illiterate asylum seekers, children acting as interpreters and support for their disabled parents, and persons with serious illnesses.

Reasons for not identifying the vulnerability are varied. The contacts have raised issues such as the excessive workload placed on the legal aid counsels, and the lack of experience of the counsels, representatives, reception centres, and officials of the Finnish Immigration Service. The vulnerable applicants have not been aware of their rights or of the weight of their experiences in the asylum process. Counselling has been partially inadequate. In June 2017, the Non-Discrimination Ombudsman issued a statement on the processing of vulnerable asylum seekers' cases in particular. In her statement, the Ombudsman underlined the human rights principles

emphasised in the asylum procedure, and the significance of the international human rights obligations that are binding on Finland. The Ombudsman wanted to direct the attention of the authorities handling asylum matters to the obligation of the Aliens Act to promote good governance and legal protection in matters concerning foreigners, and to promote the implementation of an interpretation of the law that is favourable to fundamental and human rights in the processing of asylum applications.

Victims of human trafficking are entitled to special support under the international conventions and EU legislation. If a victim of human trafficking is not identified or the legal definition of human trafficking is not applied correctly, the victim may not be referred to the assistance provided for victims of human trafficking, and their experiences of exploitation may not be sufficiently acknowledged in the asylum and residence permit process. The legal protection of the victim is endangered, as the person can be entitled to a residence permit as a victim of human trafficking. Therefore, special consideration shall be given to the identification process.

The identification of vulnerability must be emphasised right in the early stages of the asylum process, so that the right of vulnerable asylum seekers to receive assistance during the process and appropriate reception services is realised. The 2016 legislative reforms on the available legal assistance and on the legal assistance providers' operating requirements may influence the substantive decisions issued to an asylum seeker, so that the possibility of receiving protection is reduced. Not having a chance to meet with a lawyer prior to an asylum interview may influence an asylum seeker's capability to inform the decision-maker of all the relevant facts. If the decision-maker is not aware of all the details, the case may result in a faulty decision.

In one case, a support person contacted the Non-Discrimination Ombudsman at the appeal stage. An asylum seeker, whose application had been refused, had been diagnosed with severe dyslexia, which, according to the statement, affected the applicant's ability to deal with authorities. Severe dyslexia can, on a case-by-case basis, be viewed as a disability referred to in the Non-Discrimination Act. The Non-Discrimination Ombudsman issued a statement in connection with the appeal submitted to the Supreme Administrative Court and underlined that,

as a person with disability, the applicant would have been entitled to reasonable accommodation. The Ombudsman found that the matter should have been returned to the Finnish Immigration Agency for a new consideration, and that the applicant's functional capacity should have been acknowledged in the organising of the asylum interview, for example. The Ombudsman deemed possible that the applicant's special needs had not been identified at an early stage of the asylum process, and therefore the applicant's need for protection had not been adequately investigated. However, the Supreme Administrative Court did not grant a leave to appeal in the matter.

Thus, the amendments made on legal assistance may influence the data available to the decision-maker, when they are making a decision concerning the granting of international protection. One can also wonder, how these amendments are connected to the fact that in 2017 the Finnish Immigration Agency believed fewer asylum seekers to be in need of international protection than before. The Non-Discrimination Ombudsman considers it positive that the Ministry of Justice has decided to study the influences of the legislative reforms on the position of asylum seekers. However, the study is planned to involve also legal assistance services provided for others than asylum seekers.

The Non-Discrimination Ombudsman finds that, in addition to the experiences that asylum seekers have of legal aid, the study on legal aid for asylum seekers should pay attention to the combined effects of the changes in legal protection in general.

Under-aged asylum seekers. Asylum-seeking children have the right to support measures referred to in the Child Welfare Act. In addition, they have the right to go to school, similarly to other children living in Finland. A minor asylum seeker without a guardian is assigned a representative who will exercise the right to speak in the minor's case. However, there are no statutory competence, education or reporting requirements set for the representatives. The number of represented individuals is not restricted, and the actions of the representatives are, in practice, unmonitored. Due to the particularly vulnerable position of unaccompanied minor asylum seekers and the challenging nature of the process, the work of the representatives should be monitored.

The Non-Discrimination Ombudsman considers it serious that in some situations the child welfare authorities have not taken action upon child welfare notifications concerning minor asylum seekers. Such events may involve discrimination based on origin or other personal characteristics, id est residence status. The municipalities' child welfare services must acknowledge that the obligations laid down in the Child Welfare Act are applicable also to minor asylum seekers. The Non-Discrimination Ombudsman issued a statement to one municipality on a case concerning the organisation of services for a minor with refugee status. No statutory integration plan had been prepared for the child, his/her placement had been monitored inadequately, and the support measures offered to the child seemed insufficient considering the child's condition. In his report to the Parliament in 2018, the Ombudsman for Children has also underlined a concern regarding the realisation of a child's best interest and the equal treatment of children. Access to social welfare and healthcare services has not been enforced equally at the national level. Problems have emerged in, for example, the availability of child health clinic services for minor asylum seekers and mothers seeking asylum, the availability of other healthcare services, the start of early childhood education and care services, and the social welfare services.

Often asylum seekers do not have any identification documents. In the case of minors, an undetermined identity may lead to a minor being treated as an adult. This occurs especially in situations, where a minor has in another EU member state before coming to Finland submitted another date of birth, according to which he/she would be an adult. Under-age victims of human trafficking, who are brought to Europe from outside the European Union, may claim to be adults due to pressure from criminals. Victims of human trafficking, whose age gives cause for doubt with regard to accuracy or who themselves have claimed to be minors, must in principle be treated as minors. Authorities must ensure in their operation that minors are not forced in Finland to bear the consequences of falling victim to a crime, but they are guaranteed the rights of a child.

Unaccompanied minor asylum seekers in general receive protection or a residence permit on compassionate grounds, as returning minors to their country of origin requires particular care and careful assessment of the

reception conditions. The first residence permit on compassionate grounds is issued for one year. The Non-Discrimination Ombudsman has been notified of situations, where young persons have not been able to renew their residence permit after turning 18. In the case of minors, the support measures and their continuity is of particular importance. Unaccompanied minor asylum seekers are focused on, but integration is hindered by the fear of being refused an extended permit after turning 18. According to the UN Convention on the Rights of the Child, the best interests of the child shall be a primary consideration. Short-term residence permits complicate the integration of a young person and make it impossible to guarantee the person with continuous support and integration measures. A situation where a child's future and continued residence in Finland is uncertain is not in the best interest of the child. Instead of uncertainty, the objectives of asylum policy and legal application should consist of finding sustainable solutions, integrating individuals with residence permit, and committing the individuals to the Finnish society.

3.1.2. FAMILY REUNIFICATION



Each person's right to respect for family life is a human right secured by international human rights conventions. For example, it is laid down in the UN Universal Declaration of Human Rights that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Indeed, family is one of the most important things in the life of almost all individuals. Asylum seekers are often separated from their family members and they are rarely able to achieve family reunification. Therefore, they are not fully capable of enjoying their equal right to family life.

It has been studied extensively that family reunification is the most important thing in the life a person apply-

ing for international protection, once they have arrived in the country of destination. If family reunification is not achieved and the family members are left in peril, the integration of the person with residence permit is endangered. According to the Council of Europe Commissioner for Human Rights, inability to achieve family reunification causes severe stress, social isolation and economic difficulties that prevent a normal life. On the contrary, persons with residence permit who are united with their family can benefit from a reinforced social support system, which promotes integration. The support of the family is particularly important to unaccompanied minor asylum seekers.

The provisions of the Aliens Act concerning the requirement for secure means of support were tightened in 2016, when the requirement for means of support was extended to family reunification of individuals who have received international protection. After being granted asylum, refugees have a three-month period during which they can submit an application for family reunification to which the requirement for means of support is not applied. Such exception to the requirement for means of support is not applied to subsidiary protection beneficiaries. As a result, subsidiary protection beneficiaries have been forced to appeal a positive decision issued for them, so they could be granted refugee status and, therefore, have a better possibility to achieve family reunification. Both refugees and subsidiary protection beneficiaries have received international protection in relation to their country of origin or permanent state of residence. Therefore, it is difficult to find acceptable grounds for their different treatment concerning family reunification. All applications for family reunification submitted by international protection beneficiaries should be processed on equal grounds.

The individual situations of international protection beneficiaries vary. Many international protection beneficiaries have a background in violence or diseases, and they have not completed their education or are missing education altogether. In relation to these starting points and the requirements of the Finnish labour market concerning language skills and education, it is not realistic for a recipient of protection to find a job, at least not quickly, with a pay that is adequate for the person to be united with a spouse and two children, for example. The Constitutional Law Committee has also found in its statement

At the moment, a refugee's right to family life is not adequately implemented in Finland, and the UN Convention on the Rights of the Child is not acknowledged appropriately.

[PeVL 27/2016] that the requirement for means of support, tied to a fixed and rather large amount in euros, seems to be problematic with a view to the obligation of proportionality, especially considering the position and earning possibilities of persons to whom the requirement is applied as a result of the proposal.

Speedy family reunification promotes successful integration. The requirement for means of support should be re-evaluated with regard to the applications for family reunification submitted by international protection beneficiaries, and the earlier practice of not requiring a secure means of support for this group should be re-adopted.

The requirement for means of support established for family reunification applies also to unaccompanied minor asylum seekers. With regard to children, meeting the requirements for refugee status may be challenging, as a child may not have sufficient information of the threat against them or know how to explain it. Under the UN Convention on the Rights of the Child, children are entitled to both their parents, and a child shall not be separated from his or her parents against their will, save in exceptional cases. The Convention also requires that family reunification applications submitted by children shall be processed in a positive, humane and expeditious manner.

It is practically impossible for a minor to obtain such income that would allow for family reunification. Applying such a requirement to a child is not in the best interest of the child. Instead of maintenance obligations, children have the right to family life and care from the parents. Applying the requirement for means of support to family reunification applications submitted by minors is unreasonable. The Constitutional Law Committee wanted to direct the Government's attention (PeVL 27/2016) to the fact that, in reality, an under-age sponsor has very little possibilities of meeting the income requirement. On the other hand, the threshold for deviating from the requirement for secure means of support has been set relatively

high. The Committee pointed out in its statement that, in decision-making concerning family reunification, special attention shall be paid to the provisions of the Convention on the Rights of the Child and the European Convention on Human Rights, and the provisions of section 6 of the Aliens Act concerning the best interest of the child shall be acknowledged.

Family reunification is not complicated only by the high requirements for income, but there are often also other obstacles. In addition to the Council of Europe Commissioner for Human Rights, the UNHCR has also highlighted these observed difficulties in the consultation concerning the European Union's legislation on foreign nationals in the autumn of 2017. Family members must identify themselves at the Finnish embassy, which is often located far away and accessing the embassy may require a visa. In addition, the fees of applying for a residence permit have been increased, so that an application comprising one adult and two children costs nearly one thousand euros. Persons living in crisis areas may find it difficult to initiate an application at all, as acquiring the necessary documents and travelling abroad may be impossible. Persons applying for residence permit may have a wider definition of family than what is provided in the Aliens Act. For example, the family's child may turn 18 during the process and, as a result, be excluded from the strict definition of a family member provided in the Aliens Act. In addition, the strict interpretation of disrupted family ties may lead to a refusal of the application. In such cases, the refugee is deemed to have left their family members voluntarily and, therefore, the permanent family life required to grant family reunification is deemed terminated.

Particularly family members of asylum seekers coming from conflict countries may have the same grounds and also prerequisites for protection as the family member in Finland. The possibility of family reunification through the residence permit process must be realistic, as in the absence of legal measures the alternative may be that the family members in the country of origin embark on a perilous escape journey. This may result in hazardous situations for the individuals.

The Non-Discrimination Ombudsman issued a statement to the Administrative Court regarding a case of disrupted family ties. The father had been granted refugee

status in Finland. The family had escaped from their home country together, but the family members had later been separated, as the flight to Europe would have been too hazardous for the spouse and small children. Their application for family reunification was refused, because it was found that close family life had been disrupted during the long period of exile. The family's country of nationality demanded the family members applying for family reunification to sign an apology for exiting the country, and, as a precondition for renewing the passports of the family members, required that the father who had gained refugee status would return to the country. The family members are in a third state, as refugees without passports, waiting for the processing of the appeal submitted in the family reunification matter. It is the opinion of the Ombudsman that principles established in the case-law of the European Court of Human Rights on the interpretation of family ties were not taken into account in the decision.

The Non-Discrimination Ombudsman finds that the right to family life should be equally secured for persons with refugee status and subsidiary protection status, so that the requirement for secure means of support is not applied to their applications for family reunification. Particular attention should be paid to the child's right to family life and their parents' care.

3.1.3. AUTHORISED RESIDENCY AS ALTERNATIVE FOR A SHADOW SOCIETY

The position of persons staying in a country without a residence permit is weak, and they are vulnerable to exploitation and even human trafficking. The number of persons staying in Finland without a residence permit has increased in the last two years. This has been caused by the increased number of negative decisions concerning international protection, and the implemented legislative reforms.

The reception services were set to be terminated, when the refusal of an application for international protection is due to be enforced [Act on the Reception of Persons Seeking International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings (746/2011), later referred to as the Reception Act]. Previously, individuals remained registered in the reception centre until the decision was legally valid or enforced, id est the person was removed from the country.

Another change involved the imposing of stricter procedures in the granting of temporary residence permits, so that a permit is only granted to persons who are not able to return to their country of origin, despite their attempts. Persons who could not be returned through authority action could previously be granted a temporary residence permit due to the prevented removal from the country. The current practice is that temporary permits are granted only in highly exceptional situations.

With regard to the termination of reception services, the Ombudsman has received information of several customer cases where persons who have been refused asylum have been removed from reception centres without referring them to municipal services. Everyone is entitled to indispensable subsistence and care referred to in section 19 of the Constitution of Finland. The Ministry of Social Affairs and Health has issued recommendations on 31 January 2017 on urgent social welfare and healthcare services to illegally residing persons. Despite the instructions, there is variance in the regional practices. Sometimes there are no services at all available to persons staying in the country without a residence permit. On the contrary, in some other municipalities such persons may have access to emergency housing and social assistance.

The Non-Discrimination Ombudsman finds that the differing practices of municipalities have created a problematic situation from the perspective of equality. The instructions of the Ministry issued on the matter have not solved the problem, but each municipality must independently determine the significance of indispensable subsistence and care. In the absence of legislation and instructions, an individual social worker is often forced to decide on the contents of the right laid down in the Constitution. Therefore, the responsibility has been removed from the national level and placed at the discretion of individuals, which is neither appropriate nor does it promote equality.

The Social Insurance Institution of Finland, Kela, is responsible for granting basic social assistance. The Administrative Court of Turku overturned (17 October 2017, 17/0569/2) Kela's negative decision on basic social assistance and found that persons residing in the country illegally are also entitled to at least an indispensable share of the social assistance. Basic social assistance is used to secure the minimum income indispensable for a person and family to lead a life of dignity. It has come to the

Non-Discrimination Ombudsman's knowledge that despite the Administrative Court's decision, persons without valid residence permit are not always granted the assistance.

The Non-Discrimination Ombudsman finds that provisions on the indispensable care and subsistence referred to in section 19 of the Constitution, to which all individuals – including irregular migrants – have the right, should be laid down in legislation.

There is an increasing number of persons residing in Finland, who cannot be returned through authority action. Some of them feel, for different reasons, that they do not dare return to their country of origin, and they prefer to stay in Finland without a residence permit. These individuals often have very poor chances of legalising their residence. This phenomenon has various disadvantages, such as falling victim to exploitation, health risks, crime and desperation. These drawbacks are directed heavily at the person staying in the country without a residence permit, as well as to the society in general.

In connection with the Government proposal (HE 170/2014) on amending the Reception Act, the Government issued a resolution, according to which it will monitor carefully the proposal's impact on the number of irregular migrants and take legislative and other measures necessary to remedy the situation, if the number of persons residing in the country without a residence permit increases significantly as a result of the enforcement of the proposal. According to the Finnish Immigration Service's guidelines (MIGDno-2016-819), the Finnish Immigration Service monitors the terminations of reception services and the reasons thereof.

The Non-Discrimination Ombudsman finds that the impacts of the Reception Act on the increase in the number of persons residing in the country without a residence permit should be examined, and the necessary legislative amendments should be implemented to ensure that the reception services would not be terminated before the decision to remove a person refused an asylum from the country can be enforced.

Practice has shown that some persons without a residence permit will stay in Finland, even in a poor situation. Therefore, there must be other available solutions to the situation than the enforcement of the refusal of entry. It is in nobody's best interest that there are employees

without a work permit in the labour market, or that crimes are not reported due to fear. Legalising the residence of persons who work in Finland, have lived here for years and are integrated into the society would, from the society's viewpoint, be a more reasonable alternative than allowing the shadow society and possibilities for exploitation grow.

The Non-Discrimination Ombudsman deems it worrisome that persons staying in the country without a residence permit do not necessarily dare to apply for a residence permit or to report even severe crimes against them in the fear of deportation. A residence permit application can be submitted either electronically or on paper. Persons applying for a residence permit must, however, identify themselves personally at a service point of the Finnish Immigration Service. The Non-Discrimination Ombudsman has been informed by non-governmental organisations of cases, where the police has detained a person applying for residence permit when the person has visited a service point to identify themselves at a previously booked time. Each of these persons had an enforceable negative decision. The Non-Discrimination Ombudsman deems the impact of this type of action worrisome, as it may deter persons without a residence permit from applying for legalised residence.

Some of the EU member states apply a so-called firewall. The firewall refers to procedures secured for irregular migrants, which they can use to report a crime against them or submit a residence permit application, for example. It is possible to deal with authorities under the protection of the firewall, without having to fear the enforcement of removal from the country as a result of the service situation. It is the understanding of the Non-Discrimination Ombudsman that this would not require a legislative reform, but the matter can be processed at the ministry level or through the internal guidelines of the police. It must be possible to apply for a residence permit, despite the fact that a person has stayed in the country without a residence permit. Furthermore, such a situation alone should not lead to refusal of the residence permit application, if the requirements for a residence permit are in other respects met.

The Non-Discrimination Ombudsman finds that persons staying in the country without a residence permit should be guaranteed a possibility to deal with authorities without having to fear the enforcement of removal from the country as a result of the service situation.

In 2017, the enforcement of removal from the country stirred an exceptional amount of interest, both in the civil society and the media. Some citizens believe that, at the moment, nobody should be returned to countries involved in difficult and long-term conflicts, such as Afghanistan or Iraq. UNHCR has criticised Finland for excessive application of the internal flight concept. Finland implements repatriations to Kabul, which according to the assessment of Amnesty International is an extremely dangerous area. A group of influential Finnish persons has also demanded the repatriations to Afghanistan to be terminated. However, as a result of the tightened legislation and the stricter decision policies of the Finnish Immigration Service, the number of repatriations to these countries has increased. This, in turn, has increased the mistrust towards the authorities enforcing the repatriations.

At the moment, the security situation of Afghanistan is unstable, and the existing conditions there endanger the safety or returned individuals. For this reason it would be justified to refrain from implementing repatriations, and the Finnish Immigration Service should grant temporary residence permits to asylum seekers.

3.2. STUDY ON THE DECISIONS OF THE FINNISH IMMIGRATION SERVICE CONCERNING INTERNATIONAL PROTECTION IN 2015–2017

As a result of extended conflicts in the Middle East, the number of asylum seekers increased dramatically in Europe in 2015. Finland, too, received an exceptionally large number of applications for international protection in 2015 – more than 32,000 applications were submitted, whereas in the previous years the figure had been a few thousand per year. In the late 2015 and in 2016, the Finnish Immigration Service made a multiple number of decisions concerning international protection in comparison with previous years. Due to the drastic increase in the number of applications, the phenomenon became known in Europe as the refugee crisis or asylum crisis, although the number of asylum seekers and refugees is several times higher around the conflict areas, outside Europe. In 2016 and 2017, the number of applications returned to approximately the level of 2014 in Finland.

Finland, too, reacted to the increase in the number of asylum seekers by tightening asylum policies and implementing different legislative reforms to support this end. With regard to granting international protection, the category of humanitarian protection was erased from the Aliens Act in 2016. Other legislative reforms applied to the reception of asylum seekers and provision of legal aid, for example. No legislative amendments have been made to the provisions concerning asylum or subsidiary protection. Decisions concerning international protection, the asylum policy, and the legislative reforms have also been the topic of ample public debate.

In May 2017, the Non-Discrimination Ombudsman, the Faculty of Law of the University of Turku, and the Institute for Human Rights at Åbo Akademi University decided to carry out a joint pilot study to investigate the changes that have taken place in the decisions regarding international protection. The background for the study was provided by the differing views, expressed in public debate, on the level of protection and decision procedures, and the growing concern among the civil society regarding the validity of the decisions received by asylum seekers. The starting point for the study was to obtain analysed data on a matter which, in the public debate, seemed to be based predominantly on opinions rather than knowledge.

The tasks of the Non-Discrimination Ombudsman include preparing and commissioning analyses, publishing reports, and making initiatives. The Non-Discrimination Ombudsman has a broad right of access to information, which gave the Ombudsman the right to obtain the material used in the study. The Ombudsman employed for the research project two fixed-term researchers, who were appointed with the task of familiarising themselves with the existing decisions, coding the confidential asylum decisions into numeric form used in the study, and analysing the material. The study was supervised and the results evaluated by the University of Turku and Åbo Akademi University.

The implementation of the research project was initiated in August 2017. Because the project had a tight schedule and there were factors of uncertainty related to the availability of the research material, several restrictions were made to the research questions and the used material. The analysed material was chosen to comprise only first-instance decisions, and the decisions taken by the

judicial system have not, therefore, been examined. The study is, in fact, a pilot study by nature. This report presents the central findings and conclusions of the study. The more precise results and, for example, a detailed description of the material and procedures can be found in the whole study, which is published separately in Finnish.

3.2.1 OBJECTIVES OF THE STUDY

The objective of the study was to study with statistical and qualitative methods the application of the Aliens Act with respect to international protection in the decision-making of the Finnish Immigration Service in 2015 and 2017. The study focused in particular on analysing whether statistically significant changes have taken place in the decision-making policies between the two time periods, and how the potential changes are visible in concrete decision-making.

The study investigated whether there have been quantitative changes in, for example, the applicant profiles in the different time periods, and whether changes have taken place between the time periods with regard to the asylum grounds the persons have appealed to and what parts of the applicants' statements the Finnish Immigration service has considered to be credible. A further examination was given to the above-mentioned factors and their relation to the final decision.

Data. The research data consisted of the positive and negative decisions on international protection concerning Iraqi citizens of 18–34 years of age from two different time periods in 2015 and 2017. The data comprised a total of 243 decisions, 125 of which were taken in April–August of 2015 (complete data including all decisions) and 118 in June–August of 2017 (random sample). The study was aimed at Iraqi citizens of this particular age group, because their share of the persons applying for international protection was clearly the largest in the studied time periods.

The first time period included in the study from the year 2015 represents the so-called normal situation, before there was a momentary, considerable increase in the number of applications for and decisions on international protection, and before amendments were made to the Aliens Act to remove the category of humanitarian protection. The second time period from 2017 represents the new, normalised situation after the “crisis”.

Structure and justification of decisions. The decisions on international protection, taken by the Finnish Immigration Service, include the register data, id est basic information on the matter and applicant, the authority decision concerning the applicant's case, description of the grounds for the application submitted by the applicant, potential additional clarifications submitted by the applicant, and justification for the decision. The justification section contains the Finnish Immigration Service's assessment of the facts included in the application, as well as a legal assessment of these facts. In addition, the decision contains instructions for submitting an appeal, the service of the decision, and the legal norms and references applied to the decision.

Significant changes were observed between the compared time periods in the extent of the different portions of the Finnish Immigration Service's decisions on international protection. As a whole, the changes in describing the grounds for application and the facts, and in the extent of the legal assessment, explicitly complicated the comparing of positive decisions on international protection taken in 2015 and 2017. The limited extent of information included in the positive decisions of 2017 made it difficult to determine, on what kind of assessment the decision to grant protection had been based. Based on the data, the research team was only able to compare the assessments that the Finnish Immigration Service had used as grounds for issuing a negative decision on international protection.

Legal background of international protection. International law is based on the idea that each state can determine independently, who to allow in the state's area. On the other hand, all individuals falling victim to persecution have also the right to apply for international asylum (for example the UN Universal Declaration of Human Rights, article 14(1)). Instead, international law does not provide a right to asylum. International law does, however, include the so-called non-refoulement principle, according to which persons shall not be returned to an area where they may be subjected to death penalty, torture, persecution or other treatment violating their dignity. In Finland, international protection is based on international instruments and conventions, and on the legislation of the European Union. More detailed provisions on this human right can be found in chapter 6 of the Aliens Act which contains regulations on international protection.

Under section 87 of the Aliens Act, an alien is granted asylum if they have a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion. Furthermore, it is required that they reside outside their home country or country of permanent residence, and that they, because of their fear, are unwilling to avail themselves of the protection of that country. If the person does not meet the criteria mentioned above, they can be issued with a residence permit on the basis of subsidiary protection. In such a case it is required that substantial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country.

However, not all persons at risk of persecution receive protection. An asylum or subsidiary protection status can be refused, for example, because a person can resort to so-called internal flight. This means that the person can move to another part of their country of origin, where they are not at risk of being persecuted, or where they can receive protection. When assessing implementation of internal flight, attention must be paid, for example, to the conditions existing in the country and the personal conditions of the asylum seeker.

3.2.2. CENTRAL FINDINGS OF THE STUDY

In the following, we discuss the central research questions and the related findings made from the data. The more detailed tables and discoveries are presented in the results of the whole study.

Have there been quantitative changes in the applicant profiles between the compared time periods (for example considering the religion, gender or family ties of the applicants)?

The study examined whether there have been changes in the applicant profiles, id est the background data of the individuals, between the time periods. With regard to the applicant profile, no statistically significant changes were discovered in the study concerning gender or family structure (spouse and under-age children included in the application). The share of men, women, and applicants with families remained the same in both time

periods. With regard to religious background, it was discovered that the share of Sunni applicants decreased between the time periods, whereas the share of Shia applicants increased significantly. Concerning religion, there were so few observations in certain groups that statistical significance could not be demonstrated.

The increase in the number of unaccompanied young male immigrants has been offered as one reason for the increase in the number of negative decisions. The data did not support the above-mentioned statement. There were no significant changes in the gender and family structure of applicants between the time periods of the study. The applicants included in the research data represented a certain age group and nationality, which means that these factors do not explain the results of the study, either.

Have there been changes in the level of granted protection between the time periods, and can the potential changes be explained by, for example, the removal of humanitarian protection from the law or the changes in the application of international flight?

Changes have taken place in the provision of international protection between the time periods. Statistically it was visible that significantly less international protection was granted in 2017 than in 2015. Significantly fewer asylums were granted in comparison to the earlier time period, and almost no subsidiary protection was granted in the later time period. In 2015, a distinct majority of asylum seekers, 86 per cent, received a positive decision, id est they were granted international protection or another residence permit. A negative decision was issued to 14 per cent, which means they were refused entry. On the contrary, in 2017 the majority of applicants, 79 per cent, received a negative decision, whereas 21 per cent were granted international protection.

The data did not support the idea of the removal of humanitarian protection from the legislation as the explanatory factor behind the increased number of negative decisions. Humanitarian protection was seldom applied even before it was removed from the Aliens Act in 2016 (332/2016), and the complete data of the 2015 time period did not include any such case. Based on the statistics of the Finnish Immigration Service, this is an understandable outcome: out of all asylum seekers in 2015, humanitarian protection was offered to 119 persons.

Assessment of internal flight was reduced explicitly between the time periods and it was applied only rarely – in one case in the time period of 2017. The decisions were examined for separate assessments concerning the possibility to apply internal flight. In 2015, the possibility of internal flight was assessed in 92 per cent of the cases, whereas the figure was 14 per cent in 2017.

The assessment of internal flight was often not reached in the 2017 decisions because the evaluation of need for international protection was terminated before this stage. When the outcome is that the applicant is not in need of international protection, there has been no need to process the possibility of internal flight.

LEVEL OF INTERNATIONAL PROTECTION IN DIFFERENT TIME PERIODS, ACCORDING TO THE DATA OF THE STUDY, %

	2015	2017
Refusal of entry (<i>negative decision</i>)	14	79
Asylum	62	19
Subsidiary protection	22	3
Compassionate grounds	2	0
Humanitarian protection	0	/
Total % (N)	100 (N=125)	100 (N=118)

Share of positive and negative decisions made by the Finnish Immigration Service in the data of the study, in years 2015 and 2017, %.

Have there been quantitative changes between the time periods regarding the reasons for persecution provided by the applicants, and what reasons for persecution the Finnish immigration Service has deemed credible?

An alien may be granted asylum if they have a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion. Applicants may have provided several of the above-mentioned reasons. The data also included applications, in which the applicant had not appealed to any of the grounds laid down by law. The latter constituted a slightly smaller percentage (10 per cent) in 2017 than in 2015 (19 per cent).

REASONS FOR PERSECUTION THE APPLICANTS HAVE REPORTED AND THE FINNISH IMMIGRATION SERVICE HAS FOUND CREDIBLE ACCORDING TO THE DATA OF THE STUDY IN DIFFERENT TIME PERIODS % and N [total]

Reason for persecution	Reason accepted:		Decisions where applicant has provided the reason: total (N)	
Finnish Immigration Service	Finnish Immigration Service (%)			
	2015	2017	2015	2017
Religion	90 %	19 %	62	42
Political opinion	58 %	21 %	55	68
Membership in a particular social group	55 %	6 %	20	17
Ethnic origin*	50 %	0 %	4	3

The data of the study in both time periods, divided up into reasons of persecution that the applicant has provided and those accepted by the Finnish Immigration Service, % and N (total).

Religion and political opinion were the most common reasons for persecution provided by the applicants. When examining the situation in the time period of 2017 it was discovered that appealing to religious reasons decreased and, instead, appealing to political reasons increased compared to the year 2015. Providing other reasons was more rare, and no changes were observed between the time periods in this respect.

With regard to the applicants who had provided a reason for persecution laid down in the law, each reason for persecution was examined separately to determine which reasons the Finnish Immigration Service found credible. A similar observation was made with regard to all the reasons: the Finnish Immigration Service accepted the grounds provided by applicants more often in the time period of 2015 than in 2017. The most notable change was observed concerning religion. In 2015, the Finnish Immigration Service accepted religion as grounds for international protection in almost all applications where it had been provided (90 per cent). In 2017, this was the case only in approximately one fifth of the applications. This depicts also the general line between the time periods.

Have there been changes between the time periods in the acts of persecution that the applicants fear and in the types of acts of persecution, feared by the applicants, that the Finnish Immigration Service has deemed credible?

There were no major differences detected between the time periods with regard to what kind of acts of persecution the applicants had reported to fear. Previously occurred persecution as grounds for fear was slightly more common (73 %) in 2017 than in 2015 (58 %). Almost all applicants (96 % in 2015, 92 % in 2017) had reported to fear physical or mental violence, including sexual violence. No differences between the time periods were detected in this respect.

In both time periods it was less common to appeal to the other acts considered as persecution under the Aliens Act, such as police or judicial measures which are in themselves discriminatory. No statistically significant differences were discovered in this respect, either.

There were no statistically significant differences between the time periods in whether or not the Finnish Immigration Service accepted previously experienced persecution reported by the applicant as grounds for fear. Instead, distinct differences were discovered in the way that the Finnish Immigration Service assessed the fear of physical or mental violence expressed by the applicant. In the time period of 2015, the fear of violence was accepted in 85 per cent of the applications, whereas in 2017 it was accepted only in 19 per cent. Similarly, in 2015 the Finnish Immigration Service considered the applicant's fear to be objectively justified in three out of four decisions, whereas in 2017 this was the case in one in five decisions.

THE GROUNDS FOR FEAR EXPRESSED BY THE APPLICANT AND ACCEPTED BY THE FINNISH IMMIGRATION SERVICE ACCORDING TO THE DATA OF THE STUDY IN DIFFERENT TIME PERIODS, % and N [total]

Accepted by the Finnish Immigration Service	Reason accepted (%)	Decisions where applicant has provided the reason in total (N)	
		2015	2017
Previously experienced persecution as grounds for fear	49 %	38 %	73
Fear of physical or mental violence	85 %	19 %	120
The Finnish Immigration Service considers applicant's fear justified in objective examination	77 %	20 %	112

The grounds for fear expressed by the asylum seeker and the grounds that the Finnish Immigration Service has accepted according to the data of the study in years 2015 and 2017, % and N (total)

Have there been quantitative changes between the time periods regarding the type of infringements expressed by the applicants and the kind of infringements the Finnish immigration Service has considered credible?

The decisions were analysed to determine whether applicants had reported to have been detained or imprisoned, kidnapped or tortured, or subjected to other forms of violence, and whether the Finnish Immigration Service accepted the applicants' stories. No differences in percentages were discovered between the time periods with regard to the infringements expressed by the asylum seekers. A statistically significant change was observed in whether or not the Finnish Immigration Service had considered the applicant's report of kidnapping and other forms of violence credible. The most prominent difference was that in the earlier time period almost all reports of being kidnapped expressed by the applicants had been accepted (91 %), whereas only one in three reports of being kidnapped had been accepted in 2017.

Have there been changes between the time periods on whether or not the Finnish Immigration Service considers the previous infringements against the applicant or their family as an indication of potential future infringements?

When assessing the need of international protection, the decision-maker is evaluating if the person seeking protec-

tion will be subjected to persecution or severe danger if they are returned to their country of origin. In other words, the decision-maker must be able to assess, if there will be a threat against the person in the future. The mere fact that the person seeking protection has previously experienced persecution or severe harm is not enough. However, it has become an established view in refugee law that a previous infringement is a strong indication that the person may be subjected to persecution or harm in the future. This starting point has been expressed in, for example, the EU Qualification Directive (Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted). Under this Directive, the decision-maker has a higher standard of proof compared to asylum seekers, and the decision-maker must be able to overturn the assumption of future persecution.

ARTICLE 4(4) OF THE QUALIFICATION DIRECTIVE:

The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

With respect to possible previous infringements, the asylum decisions were examined to determine whether the infringements were considered to be individual, unconnected events, with no links to future threats. Statistically significant differences were discovered between the time periods, with the exception of the importance of infringements experienced by family members. In the time period of 2017, in almost all decisions (95 %), where physical infringements had been expressed, they were assessed as individual events with no connection to future threats. In the time period of 2015, this was the case in only 11 per cent of the decisions in which infringements had been reported.

There was a statistically significant difference between the time periods in whether or not the Finnish Immigration Service considered the applicant to be in danger of being subjected to persecution. In 2015, the Finnish Immigration Service considered the applicant to be in danger of persecution in 66 per cent of the decisions, whereas in 2017 this was the case in only 19 per cent of the decisions.

Have there been changes between the time periods in the Finnish Immigration Service's evaluation of whether or not the applicant's fear is justified in objective examination?

In 2015, the Finnish Immigration Service considered the applicant's fear to be justified in 77 per cent of the cases, whereas in 2017 in only 20 per cent. When examining the data, the arguments of the Finnish Immigration Service's justifications provided in the decisions as to why it has been deemed in the negative decisions that the applicant's fear has not been justified, were mapped onto the data matrix. Based on these arguments, it was possible to carry out a qualitative content analysis on the kind of changes that have taken place in the decision policies of the Finnish Immigration Service with regard to the negative decisions.

Because there were generally fewer negative decisions in 2015, there was also less argumentation in this time period to justify the negative decisions. The arguments for the decisions in this time period were focused on the credibility of the applicant's statement, and on the fact that the applicant was not deemed profiled in the eyes of the actors of persecution. The threshold for making a negative decision based on lack of credibility seems to have been rather high. Only when an applicant's story was "clearly not cred-

ible" and the applicant had neglected to complement it or provide evidence, international protection was refused. Instead, minor lacks in credibility have not necessarily constituted grounds for refusing protection. The data includes several decisions, where the Finnish Immigration Service has considered some parts of an applicant's statement to lack credibility, but it has not been able to ascertain on these grounds that the applicant would not be at risk of persecution, in which case international protection was granted despite the matters that were not credible.

There were several negative decisions in the time period of 2017, and the argumentation thereof was highly diverse and versatile. In comparison to the earlier time period, the burden of proof seemed to have been reversed. In many decisions of the earlier time period international protection was granted, unless it could be proved that the applicant was not in danger. In contrast, protection was refused in many cases in the later time period, if the applicant could not provide exact details of the armed group that was threatening them, and why and how the infringement experienced by the applicant or their family member was linked to the actor of persecution. The arguments included several mentions stating that an applicant's story was "superficial", "inaccurate" or "contradictory". Arguments related to threat were common, and several decisions included arguments stating that the connection between the infringement experienced by the applicant or their family member and the actor of persecution pointed out by the applicant was based on the applicant's own assumptions. The Finnish Immigration Service often argued that the individual was not personally profiled in the eyes of any agent of persecution, and, therefore, was not personally in danger. Based on the data, it appeared as though in the time period of 2017 applicants were required to provide detailed information of, for example, who was threatening them, for what reason, and why them specifically, before it has been considered credible that the applicants actually are in need of international protection.

3.2.3. CONCLUSIONS OF THE STUDY

Statistically it is clearly visible that significantly less international protection was granted in 2017 than in 2015. In the light of the study, the increase in the number of negative decisions was explained by the fact that justifications expressed by the applicants were not deemed credible as often as in 2015. This applies to the reported reasons for persecution, experienced infringements, and

validity of fear. Furthermore, in 2017 previous infringements were not considered to indicate a risk of future infringements in the same way than in 2015.

Consequently, the empirically verified finding stating that the decision-making policies of the Finnish Immigration Service have become stricter can be considered as the key finding of this study. The legal position of the examined Iraqi asylum seekers aged 18–34 seems to have become significantly weaker between the time periods of the study.

It is particularly noteworthy that the stricter decision policy cannot be explained with the amendments to the legislation pertaining to aliens. The reasons behind stricter policies cannot be explained with the help of this material, either. Instead, the explaining factors seem to be linked to more general political steering, internal administrative steering, and changes in interpretation standards. Central factors contributing to the changes were the Finnish Immigration Service's stricter interpretation policies and outlines concerning country of origin information. It can be noted as a general finding that the stricter line is similar to the Finnish Government's immigration and asylum policies included in the action plan published in 2015.

From the point of view of an individual, the change in the interpretation policy was clearest in the way that the fear of physical or mental violence expressed by the applicant was assessed and considered justified by the Finnish Immigration Service. In 2015, the Finnish Immigration Service considered the expressed fear of violence to be objectively justified in three out of four decisions, whereas in 2017 this was the case only in one in five decisions. A change was seen also in the Finnish Immigration Service's estimates on whether the previous infringements experienced by the asylum seeker should be considered as an indication that the person is in danger of being a target again in the future. In 2017, the previous infringements were more often than in 2015 considered to be individual events with no connection to future threats. Several variables were examined in the study, and a similar phenomenon was discovered repeatedly in relation to all of them. The facts reported by the applicants had not changed between the time periods, but the Finnish Immigration Service's decision policy had changed conclusively, being considerably stricter in 2017 than in the time period before the increase in the number of asylum seekers.

The data did not support the concept of explaining the increase in the number of negative decisions by the removal of humanitarian protection from legislation. Humanitarian protection was applied rarely even before it was removed from the law in 2016. The principle of internal flight was applied only seldom, and the frequency was reduced distinctly between the time periods – it was only applied to one case in the time period of 2017. With regard to applicant profiles, no statistically significant changes were observed in the study in gender or family structure, nor in, for example, the reason for persecution expressed by the applicants in the different time periods or in what they had reported to have experienced. These reasons do not explain the increased number of negative decisions, either.

The changes that were detected in the study can be considered as worrying, both for the enforcement of fundamental and human rights and for Finland as a state governed by the rule of law. From the point of view of individuals, decision-making that concerns the rights of the asylum seekers involves particularly significant fundamental and human rights: ultimately the right to life and humane treatment. In the light of this study, significant reductions to rights of this magnitude can be implemented in Finland without specific support from the legislator. However, the principle of rule of law requires that all amendments pertaining to the legal position of individuals are always implemented through legislation. When restricting fundamental and human rights, this is the absolute minimum requirement. This development is also problematic with a view to the international obligations binding on Finland.

This is a significant issue also in the context of enforcing democracy. When the preconditions for enforcing fundamental and human rights are weakened significantly through authority steering and interpretation policies, the Parliament is denied the possibility to participate in the decision-making concerning the amendment, as required under the Constitution. Only the legislative proceedings and the related Parliamentary consideration of the bill would enable both the advance monitoring of the implementation of fundamental and human rights, and democratic and public debate over the weakening measures.

3.3. MONITORING THE ENFORCEMENT OF REMOVAL FROM THE COUNTRY SAFEGUARDS THE TREATMENT AND RIGHTS OF RETURNNEES

Under the Aliens Act, the Non-Discrimination Ombudsman is assigned with the task of monitoring the enforcement of removals from the country as an independent external authority. This report presents observations and experiences accrued in this monitoring task since the year 2014. The Non-Discrimination Ombudsman monitors only a small portion of the returns. However, the observations give cause for development needs, with regard to both monitoring and the enforcement of removal from the country.

The police is imposed with the task of removing from the country any aliens who do not meet the requirements for residence. Sometimes the removals are forcibly enforced. The need for independent external monitoring has initially been raised by human rights violations detected in practice.

During 1991–2017, there were 18 deaths reported in connection to removals from country in Europe, including Great Britain, Germany, France, Sweden and lastly in Denmark in the autumn of 2017. The majority of the deaths occurred due to erroneous use of force. So far, there have been no deaths or cases of severe disability in removals from the country in Finland.

The national implementation of the EU Return Directive [2008/115/EY] was initiated with the amendment of the Aliens Act in 2011 by establishing voluntary return as the primary form of repatriation. At that time, the requirement provided in Article 8(6) of the Directive, concerning the efficient monitoring of removal from the country, was not included in national law. Monitoring the enforcement of removal from the country was imposed on the former Ombudsman for Minorities starting from 1 January 2014 [1214/2013]. In the Government proposal [HE 134/2013], the monitoring was deemed to strengthen the legal protection of both the returnees and their escorts, and to prevent excessive use of force and prohibited treatment.

3.3.1. OFFICIAL DUTIES ON PROJECT FUNDING

When the Ombudsman for Minorities was appointed with the monitoring task in early 2014, no separate resources were granted for the task. The Ombudsman was instructed to apply for project funding to carry out the

monitoring task. The monitoring was initiated with project funding from the SOLID Return Fund of the European Union. Since 2015, the Non-Discrimination Ombudsman has developed monitoring on project funding from the Asylum, Migration and Integration Fund (AMIF) of the European Union Home Affairs funds.

When the monitoring was initiated, and when plans were made for the AMIF project, it was not foreseen that the number of removals from the country would be increasing significantly. However, things turned out otherwise. The exceptionally large number of asylum seekers arriving in 2015, and who have since received a negative decision, has increased the number of removals, which still continue in the upcoming years. It is the opinion of the Non-Discrimination Ombudsman that a statutory task shall not be carried out with project funding, and this view is supported by the Parliament.

3.3.2. MONITORING DEVELOPED THROUGH EUROPEAN COLLABORATION

At the European Union level the monitoring of the enforcement of removals was enhanced in 2016 by the Regulation (EU 2016/1624) pertaining to the European Border and Coast Guard Agency, Frontex. Under the Regulation, each forced-return operation implemented in co-operation with Frontex must involve a forced-return monitor. In the implementation of forced-return operations, the participating member states and Frontex shall ensure that the respect for fundamental rights, the principle of non-refoulement, and the proportionate use of means of constraints are guaranteed during the entire return operation. A common pool of forced-return monitors for all member states was established in connection with Frontex. In addition, the training of the forced-return monitors was organised.

The Non-Discrimination Ombudsman is involved in the Forced Return Monitoring II project, where 15 member states work together to develop the operations of the Frontex pool of forced-return monitors, the expertise of the monitors, and the reporting to Frontex. Training periods involved in the project are aimed at increasing knowledge of fundamental and human rights, and at identifying potential risks of infringement in the different stages of the return process. The Non-Discrimination Ombudsman's personnel who carry out the monitoring tasks have participated in the training required by the Regulation,

and some of them have been appointed to the pool of forced-return monitors. So far, the Non-Discrimination Ombudsman has twice acted as a so-called pool monitor on joint return flights organised by Sweden and Germany. Participation in the operations has promoted the development work on international monitoring.

Recommendations for the implementation of forced returns have been issued by, for example, the Committee against Torture and the Council of Europe. In addition, provisions on return procedures are included in the European Convention on Human Rights, the EU Charter of Fundamental Rights, and the 1951 Refugee Convention of the UN. Frontex has also instructions for return processes. Recurring themes in the recommendations consist of providing the person to be removed with sufficient time to prepare for the departure, paying attention to their physical condition, using force as a last resort and appropriately, documenting the removal from the country, and providing the forced-return escorts with particular training for the task.

3.3.3. POLICE ENFORCES REMOVAL FROM THE COUNTRY

A person staying in Finland without a residence permit must primarily exit Finland voluntarily. A decision on refusal of entry or deportation is taken by the Finnish Immigration Service. The decision may be appealed to an administrative court. The majority of asylum seekers who have been issued a negative legal decision return to their country of origin voluntarily, supported by the International Organization for Migration (IOM).

In forcibly implemented removals from the country, the police will arrange for the journey, set escorts for the journey, and enforce the actual removal from the country. The police shall also ensure that the returnee is fit to travel with regard to their health, and that there is no prohibition of enforcement ordered to the refusal of entry. A prohibition of enforcement may be ordered by an administrative court, the Supreme Administrative Court, or by certain kinds of international avenues of appeal.

THE NON-REFOULEMENT PRINCIPLE

The Finnish authorities must comply with the non-refoulement provisions provided in international conventions. The principle of non-refoulement is included in the Geneva Refugee Convention, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the Constitution of Finland, the Aliens Act. The principle of non-refoulement means that no one may be refused entry and sent back or deported to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity. Furthermore, no one may be returned to an area from where he or she could be sent to an area where they could be subjected to above-mentioned treatment. The provisions on non-refoulement are observed in the decisions on refusal of entry.

Forcible removal from the country is the last resort. In such case the police has the statutory right to use force if necessary, meaning the use of restraints or physical force against the target individual. The use of force is restricted by, for example, the principle of proportionality, which requires that the police must scale its action on the lowest possible level that has the desired effect.

Escort police personnel receive separate training in restraining techniques. As methods of restraint, the police are allowed to use for example handcuffing, the bodycuff restraint system, or tying a person with devices such as plastic straps. When necessary, the police are also allowed to use special devices to prevent spitting. Out of the justifiable alternatives of restraint, the one that restricts the removed person's rights the least must be selected.

The police must respect the fundamental and human rights of the person to be returned, and comply with their own competences. The operation of the police in enforcing a removal from the country is regulated by the European and international human rights conventions, national laws, and lower-level regulations.

In the last few years, the police have returned persons from Finland annually to approximately a hundred different countries. A large portion of the removals are carried out on commercial flights. Charter flights can be used if several persons are returned to the same country or

to two countries close to each other, or if returning persons on a regular flight is not deemed plausible. Individuals have been removed from Finland on Frontex connecting flights and national charter flights at least to Albania, Kosovo, Italy, Germany, Pakistan, Congo, Nigeria, Iraq and Afghanistan.

Each year, thousands of recipients of negative asylum decisions exit Finland voluntarily. According to data submitted by the police, the police escorted 289 persons out of the country in 2016. Escorting means that the returnee was accompanied by the police all the way to their country of origin. The Ombudsman monitored 18 removals carried out with escorts, comprising a total of 89 persons. In addition, the monitors were present on four charter flights taking 341 voluntarily returning persons back to Iraq from Finland.

In 2017, the police escorted 554 individuals to their home countries. The Non-Discrimination Ombudsman monitored a total of 36 returns, where 118 individuals were removed from Finland. These include also two cases of pool monitoring, id est flights on which the monitor of the Non-Discrimination Ombudsman was present as a representative of the pool of forced-return monitors co-ordinated by Frontex: German return flight to Kosovo and a Swedish operation to Afghanistan. There were no returnees from Finland on the Swedish flight.

MONITORED REMOVALS FROM THE COUNTRY 1.1.2014–31.12.2017

Monitored returns /departure phases	2014	2015	2016	2017	total
National charter flight	-	7	6	6	19
Scheduled flight(s)	1	1	3	4	9
Frontex joint return operation <i>(national monitoring)</i>	1	5	3	8	17
Frontex pool monitoring	-	-	-	2	2
Departure phase	5	7	10	16	38
Total	7	20	22	36	85

3.3.4. MONITORING IN THE FIELD

The core of the Non-Discrimination Ombudsman's monitoring work is assessing the enforcement of the removals from the fundamental and human rights perspective. In particular, the police methods of using force and detaining persons who are to be returned interfere significantly in the individual's fundamental and human rights, such as in the individual's right to physical integrity and freedom.

The monitoring is focused on persons in vulnerable position and on removals implemented again after an interrupted return process. Attempts are made to extend the monitoring also to implementations where physical resistance from the returnee and use of force by the police can be anticipated. Furthermore, challenging destination countries that do not always let in their own citizens are significant in terms of monitoring. In case of a so-called counter-return, the escorting team will return to Finland with the escorted person.

The implementation of monitoring requires that the Ombudsman is, in accordance with her right of access to information, informed of planned removals from the country. The Ombudsman monitors removals from the country at the national level, which means that the co-operation and information flow must be smooth with all police departments. The police have adopted a constructive attitude towards the monitoring mandate of the Non-Discrimination Ombudsman, and the co-operation is still developed further.

The Ombudsman has statutory authority to monitor all removals from the country, but due to the large number of returns and the meagre resources allocated for the monitoring task, the Ombudsman has so far monitored primarily returns in which the person is escorted by the police. Within the existing resources, the aim is to have a monitor present on all joint return flights funded by Frontex, in which Finland participates. A monitor is also present on national charter flights, which have been flown to Afghanistan, for example.

The police shall provide the Non-Discrimination Ombudsman in advance with travel plans regarding individual removals from the country that are conducted on regular flights. Out of these returns, the monitors choose cases to be monitored more closely, and

cases in which they ultimately take part. For the purpose of choosing the monitored cases, the monitors conduct background studies with the help of the register of Immigration Service and the detention orders of district courts, and by contacting directly the staff of, for example, reception centres and detention units. In addition, the monitors receive information from lawyers, organisations, and contacts from the assistants and family members of the returnees. The persons to be removed from the country seldom have the knowledge or opportunity to contact the Ombudsman's office themselves.

The monitor will pay attention to questions such as if the returnee has been aware of the departure time and had time to prepare for the departure, how have the potential issues related to vulnerability been acknowledged, how the escorts treat the person removed from the country, and how the police officer leading the escort team implements the operation as a whole. Other issues to be monitored include the realisation of the returnee's right to communicate with his/her assistant and family members, provision of interpretation services and the escorts' communication with the returnee, the ability to bring luggage, acknowledgement of the returnee's physical condition and nutrition, use of force as the last resort and the relation between force and resistance, and the command of restraints. During the journey, the monitor may also discuss with the person to be removed depending on the situation.

When monitoring the enforcement of removal from the country, the monitor will place himself/herself close to the police and the returnee, however without interfering in the work of the police. In cases where force is used, the monitors assess whether or not the use of force has been resorted to as the last resort and has it been proportional in relation to resistance. In addition, the monitors evaluate whether the person to be removed has been warned of the use of force and, consequently, been given an opportunity to act differently and avoid being subjected to forcible measures.

During monitoring journeys, monitors may direct questions to the leader of the escort team and express their observations. The monitor is not authorised to intervene in the manner of enforcement, time or use of force in individual removals from the country. The monitor may not prevent or interrupt a return, either.

After the completion of Frontex returns, national charter flights and individual returns carried out on regular flights, the monitor will provide the escorts with oral feedback. In addition, the monitor will submit written feedback to the police and the National Police Board. Therefore, the task exerts primarily *ex post facto* influence.

INFLUENCE METHODS OF MONITORING:

- Oral feedback to the escort leaders and the escorts
 - Written feedback to the police departments and the National Police Board
 - Reporting to Frontex
 - Negotiations with the management of police departments and the National Police Board
 - Training the escorts and escort leaders
 - Media contacts, briefings and interviews, communication
 - Measures under the Non-Discrimination Act
 - Provision of recommendations, guidance and advice
 - Issuing requests for clarification
 - Submitting a complaint to, for example, the Parliamentary Ombudsman
 - The Ombudsman's report to the Parliament

The monitoring task ends when the authorities of the destination country receive the returnee and accept the person's entry into the country. The Non-Discrimination Ombudsman is not authorised to monitor authorities of other states. The Ombudsman or the other Finnish authorities receive only in exceptional situations any information about what happens to the returnee after the handover. The need for post-return monitoring has been discussed at both the national and EU level.

According to the Non-Discrimination Ombudsman it is important to investigate possibilities to enable post-return monitoring.

With regard to individual returnees, the Non-Discrimination Ombudsman pays attention to the protection of privacy and obligations of confidentiality. Also from the point of view of police, the returns involve matters to be held confidential. For these reasons, the focus of the monitoring is not in publicity nor in wide distribution of information. The Non-Discrimination Ombudsman does not disclose information concerning planned returns, nor does she usually publicise afterwards the completion of individual operations. The observations and development suggestions, collected on the basis of the

monitoring work, as well as other procedures are presented each year in the annual report of the Ombudsman, and communicated as necessary.

Each year, Finland takes part in several joint return flights coordinated by the European Border and Coast Guard Agency, Frontex. The Helsinki Police Department organises the arrangements in Finland.

The monitor joins the team at the latest when the police start transporting the returnees to the airport. At the departure phase, the monitor will pay attention to issues such as the returnees' fitness to fly in terms of their physical condition, or whether they have been aware of their departure and had the possibility of bringing their desired luggage and getting their affairs in order. The first flight is a connecting flight, taking the team from Finland to the actual place of departure of the Frontex operation. It can be, for example, Dusseldorf, if Germany is the country organising the return.

The team is transferred to the actual joint return flight, when the connecting flights of all participating countries have arrived. The escorts from each participating country will guide their own returnees to the aircraft in accordance with the plan prepared by the operation leader of the organising country. To ensure safety on the flight, there must be at least two escorts for each returnee. If the safety risk has been evaluated to be low, family members may sit close to one another. Otherwise each returnee will sit between two police officers.

In addition to the returnees, escorts and the monitor, the flight will carry an interpreter, medical personnel and a Frontex representative. The monitor will travel with the Finnish escort team and monitor the events throughout the process. The monitor will keep a record of his/her observations and assess them in relation to the realisation of fundamental and human rights. The monitor will pay particular attention to how the escorts acknowledge the needs of vulnerable returnees. Another particular focal point of monitoring is always the issue of how the escorts respond to potential resistance expressed by the returnees, or to other disturbances and exceptional situations.

Once the flight has arrived, the returnees are handed over to the authorities of the destination country. The practices vary between countries. Sometimes the

authorities of the host country enter the aircraft and the returnees move out once their travel documents have been inspected and their return validated. In some countries, the escorts take the returnees all the way to the terminal. Once the hand-over is completed, the team usually embarks immediately on the journey back. During the return flight the monitor will express his/her view of the operation in the debriefing. After the journey the monitor will provide Frontex with a written report.

3.3.5. MONITORING AIMED AT ENSURING MORE HUMANE REMOVAL FROM THE COUNTRY

The objective of monitoring removals from the country is developing the return process towards a more humane operation with respect for the fundamental and human rights. Co-operation with the police and other authorities and human rights actors is essential.

Transparency of authorities' actions. One of the goals of the monitoring is enhancing the transparency of removals from the country. The Non-Discrimination Ombudsman's presence in removals from the country allows the Ombudsman to acquire information about what takes place during returns. The media and human rights activists have contacted the Non-Discrimination Ombudsman on numerous occasions, and the Ombudsman has presented her task and observations. The Ombudsman has also given television and radio interviews, provided reporters with information acquired through monitoring, and organised press conferences and trainings. As part of this communicative task, the Ombudsman has corrected rumours concerning individual returns and police activities, and rectified erroneous expectations regarding the competence related to the monitoring. The first group return to Afghanistan was followed by lively debate, which is why the Ombudsman deemed it necessary to issue a bulletin on the observations concerning the return.

Free access to information. When the monitoring of the enforcement of removal from the country was initiated in 2014, the situation was new to all parties. The Ombudsman is the first party outside the police force authorised to monitor this relatively concealed operational police activity. The Ombudsman's public role as the supervisor of the prohibition of ethnic discrimination and as the defender of foreigners' status and rights may have given rise to doubts among the police concerning objectivity. Although the monitoring and co-operation with the

Ombudsman were approached with a constructive attitude, the Ombudsman initially had some trouble in acquiring information about concrete travel plans, for example.

The Ombudsman's right of access to information was confirmed by regulation of the National Police Board (POL-2017-5403) which entered into force on 1 October 2017. According to the regulation, the police departments must report all plans to enforce a decision to remove a person from the country, as well as all enforcements of said decisions, to the Helsinki Police Department, which has the central responsibility for conveying this information to the Non-Discrimination Ombudsman. The notification shall contain data such as the personal details of the returnee, departure time, flights and reason of escort. The regulation states that if it can be foreseen that a return will be exceptionally challenging, the Non-Discrimination Ombudsman shall be contacted directly in the matter. The monitoring performed by the Ombudsman in return proceedings provides an objective perspective on the actions of the different parties and, thus, improves the legal protection of both the returnees and the police officers participating in the police operations.

So far, the National Police Board's regulation has not, however, been fully implemented due to, for example, resource-related reasons. It is essential for the monitoring task of the Non-Discrimination Ombudsman that the regulation is complied with also in practice.

Development of police work. The Aliens Act does not impose the Non-Discrimination Ombudsman with a separate reporting obligation concerning the monitoring task. The relevant Government proposal only states that the Ombudsman shall report the results of monitoring in her annual report. However, the Ombudsman has considered it is important for the effectiveness and ambition of the monitoring to give feedback of the monitor's observations after each monitored operation. Feedback is given to the participating police departments, the National Police Board, and the Helsinki Police Department which is in charge of coordinating the returns. The police have stated that they handle the Ombudsman's feedback and the included recommendations in internal meetings, and acknowledge the feedback in their training.

Interpretation. In her recommendations submitted to the police, the Non-Discrimination Ombudsman has taken into account, for example, the need of interpretation, and pointed out that the use of interpreting services in returns is an essential feature of the humane treatment of the returnee. Fluent communication makes return operations smoother, allows for the acknowledgement of the special needs of persons in vulnerable position, and reduces, for its part, the need for coercive measures. Consequently, the police have increased the use of interpretation and announced that attempts are made to organise at the very least telephone interpreting for all charter returns. However, there are still shortcomings in interpretation.

According to the international recommendations and the opinion of the Non-Discrimination Ombudsman, an interpreter shall be present during the whole flight, if there is no common language.

Information on the departure time. In her trainings and feedbacks, the Ombudsman has highlighted the importance of preparing for the journey in accordance with the international recommendations. A recurring and central theme therein is the returnees' possibility to prepare for the journey, say goodbye to their friends and family members, and otherwise get their affairs in order. Finland returns persons, who have lived for several years integrated in the Finnish society with, for example, a previously granted temporary residence permit, and, on the contrary, persons who have stayed in a reception centre for a relatively short period of time. The conditions before the departure also vary because some returnees are detained to ensure a successful removal from the country, whereas others can be collected from their homes. In some cases, the departure has happened so suddenly that the returnee has not had time to pack their belongings. Victims of human trafficking have also been occasionally removed from the country without a prior notice, which means that the system of assistance for victims of human trafficking has not been able to agree on reception with the actors providing assistance to victims in the destination country.

Timely communication has also a significant impact on the returnee's mental preparation. Adjusting to the idea of return takes time. Communication and exchange of information between the different actors contribute to

preparing the returnee and allowing them to prepare themselves for the journey, and promote a more humane return that is respectful of the fundamental and human rights. For this to be possible, the police must have provided information on the departure date in due time.

Communicating the return time well in advance is, in the view of the Police, sometimes problematic. External activities to prevent the removal from the country in some particular cases has increased the enforcing authority's caution with regard to communication. Some of the removals from the country still take place with no prior notification. The Ombudsman understands the goal of the police to secure a successful return, but unannounced operations reduce faith in the authorities.

The police must find operational measures to safeguard the rights of the returnees and the transparency of the authority operations in the eyes of the civil society. The Non-Discrimination Ombudsman finds that only in highly exceptional cases the departure time can remain undisclosed to the returnee.

Co-operation between authorities. Well-functioning co-operation between authorities promotes humane returns in cases where the returnee has, for example, been detained, or he/she is staying in a reception centre. In some of her feedback, the Ombudsman has

recommended that the police should develop their co-operation with the reception centres. As part of the preparations for the return, the physical condition of the returnee shall be acknowledged and the provision of continued medical care ensured. In urgent and surprising departures, even the reception centre personnel have not always been aware of the departure time. However, the employees of the units have been working with the returnees for possibly long periods of time. Mutual trust has been created between the parties, which means that employees would be in the best position to support the returnee's orientation to the departure. According to the Non-Discrimination Ombudsman's observations, in sudden situations there has not always been time to even take care of the medication needed during the journey.

The Non-Discrimination Ombudsman has recommended that even in exceptional situations in which the returnee is not, for a well-founded reason, informed of the departure time, the staff of the reception centre shall be notified of the departure. At the time of the departure, the escorts shall always confirm the medication and necessary instructions with the returnee and the personnel of the reception centre or detainment facility.



Communications of the returnee. In 2017, the civil society became increasingly concerned for the returns to unstable conditions, such as Afghanistan and Iraq. This could be seen, for example, as protests and attempts to influence the enforcement of the returns. To secure the return operation, the police in some cases restricted the returnee's communications by seizing their mobile phone upon initiating the enforcement of the removal from the country.

The law states that the returnee must always be allowed to communicate with his/her legal assistant/lawyer.

Return operation report of the police. The police will prepare a report for each removal from the country. The Ombudsman can use the reports to evaluate also the returns in which the monitor has not participated. The Non-Discrimination Ombudsman has issued feedback concerning the inadequate contents of the return operation reports. The National Police Board has replied to the Ombudsman's feedback in its regulation on the distribution of responsibility, in which the quality and content of reports are also taken into account. A report shall present the different phases of the return operation, so that an overall view can be construed of the procedure. The Helsinki Police Department will monitor the quality of the reports. According to the regulation, the return operation reports shall be submitted to the Non-Discrimination Ombudsman. Consequently, more data is accrued constantly to benefit the monitoring work.

Right of appeal. A returnee has the right to issue an appeal based on their treatment during the return. If necessary, the Ombudsman may also issue an appeal or submit a police action for review. So far, the Ombudsman has submitted an appeal in one case to the Parliamentary Ombudsman, and requested an assessment of whether or not the force used during the return was appropriate. The Parliamentary Ombudsman transferred the appeal to the Office of the Prosecutor General for an assessment of the need for conducting a criminal investigation. The prosecutor decided on 21 December 2017 that no criminal investigation shall be conducted in the matter. The consideration of the matter continues at the office of the Parliamentary Ombudsman.

Frontex has also its own appeal mechanism on the flights it coordinates. The leader of the escort team shall inform the returnee of the possibility of appeal and provide the returnee with an appeal form, which shall be filled out and submitted for review by the Frontex human rights unit.

3.4. CONCLUSIONS AND RECOMMENDATIONS

The conflicts that have long been ongoing in the Middle East touched the lives of the Finnish people in a new way in 2015, when hundreds of thousands of people from Iraq, Syria and Afghanistan fled from the inflicted areas to Europe and also to Finland. It was deemed important to provide help and security, but at the same time it was contemplated, where to draw the line with the assistance and protection provided by the Nordic welfare states for those in need. The most radical opinions demanded the borders to be closed. One topic of public debate has consisted of whether Finland has a too narrow or too careless approach to offering international protection to persons seeking asylum in Finland. The increase in the number of asylum seekers was followed by changes in legislation and legal application practices, which have been reviewed in this chapter.

The perspective of fundamental and human rights should be at the centre in all decision-making pertaining to the status of vulnerable persons, such as asylum seekers. The asylum and immigration policies should be aimed at finding sustainable solutions, from the point of view of both the individual and the society.

The amendments as a whole seem to have created substantial consequences for individuals. Finland has been imposed with a two-tier system, unknown in our judicial system, where the level of legal protection is affected by an individual's status in Finland. The weakening of legal protection has for its part hindered the identification of persons in a vulnerable position and providing them with appropriate support and services. The vulnerability of an asylum seeker has not always been identified until after the process or at a very late stage. The amendments made on the provisions concerning legal aid have an impact on the information available to the decision-maker when they decide on the granting of international protection.

The right of minor asylum seekers to support measures referred to in the Child Welfare Act are not always respected. A child's best interest shall be the primary ground for evaluation when deciding on matters concerning the child, such as on residence permits. Unaccompanied minor asylum seekers are in a particularly vulnerable position. Due to the challenging nature of the asylum process, the work of the representatives should be monitored.

Ministry of Justice is planning to carry out a report on the legal aid available for asylum seekers. The impact of the legislative amendments and tightened practices that affect the position of asylum seekers should be assessed as a whole. The amendments have had significant combined affects that weaken the legal protection of asylum seekers, and these affects should be evaluated and the shortcomings in the legal protection rectified.

As a result of the income requirement and the increased application fees, family reunification and the right of all individuals to family life have been made practically unattainable to many beneficiaries of international protection, and subsidiary protection in particular. In reality, an under-age sponsor has non-existent possibilities of meeting the income requirement, and the threshold for deviating from the income requirement is set very high. Speedy family reunification promotes successful integration, and family reunification should be possible through the residence permit process.

The number of persons staying in Finland without a residence permit has increased in the last two years. All of these individuals cannot be repatriated through authority measures. Municipalities are responsible for providing all individuals with indispensable subsistence and care referred to in section 19 of the Constitution of Finland, but municipalities have different interpretations of the practical meaning thereof. The differing practices of municipalities have created a problematic situation from the perspective of equality. For the realisation of fundamental and human rights, it is also problematic that persons staying in the country without a residence permit do not dare to apply for a residence permit or to report crimes against them in the fear of deportation.

According to the study on the Finnish Immigration Service's decisions regarding international protection, significant changes have taken place in the decision policies between the years 2015 and 2017. The results cannot be explained with the publicly expressed factors, which include changes in the applicant profile, unaccompanied young men becoming the primary group of asylum seekers, the indirect impact that the removal of humanitarian protection has for example on the assessment of internal flight, stricter application practices with respect to subsidiary protection, and changes in situations in the applicants' countries of origin.

In the light of the study, the above-mentioned factors are not central in explaining the increased number of negative decisions, but rather it seems to be a question of a stricter standard of proof. According to the stricter policies, for example previous infringements experienced by an asylum seeker were viewed as random and unconnected events, or an applicant was required to provide a lot of information about the party threatening them and the reason for the threat, and they had to link the infringement to the threatening party. According to the study, these lines of interpretation seem to have undergone a significant change since 2015. It appears as though the Finnish Immigration Service has set the burden of proof imposed on applicants so high that only very few asylum seekers can meet the requirements with the available evidence materials.

Therefore, it is justified to ask, if the changed application policies are in line with the international norms. When assessing the standard of proof, we must pay attention to, for example, the Qualification Directive, and the essential decisions of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union concerning the standard of proof and the related distribution of the burden of proof. In their rulings, the ECHR and the Court of Justice have referred to the policies of the UNHCR. All of these form the system of case law that is binding on Finland. The Aliens Act cannot be applied independently of its roots; instead, the European case law concerning, for example, the Qualification Directive must also influence the Finnish decision procedures – not only with regard to the end result, but also with a view to evaluating the proof.

From the point of view of individuals, decision-making that concerns the rights of the asylum seekers involves particularly significant fundamental and human rights: ultimately the right to life and humane treatment. If application practices change this significantly without legislative amendments, it raises a question of compliance with the principle of rule of law, especially considering that the persons in question have been in a vulnerable position. It should be the established principle of the rule of law that all amendments pertaining to the legal position of individuals are always implemented through legislation. When restricting fundamental and human rights, this is the absolute minimum requirement. Consequently, there is cause for discussing the extent of authorities' discretionary powers, particularly with regard to persons in vulnerable position and to restrictions on fundamental and human rights.

The study included only decisions issued to Iraqi citizens aged from 18 to 34. However, it can be assumed that the decision policies have changed also with regard to the other applicant groups. Due to time restrictions and other limitations, the study could not be complemented with a review of court decisions concerning international protection.

Based on the findings of the study it is justified to ask, if the legal protection of asylum seekers is fully enforced in Finland. The requirement of speedy enforcement of negative decisions is questionable, unless it can be confirmed that the practice is correct and the applicant's case has been thoroughly investigated.

The level of international protection in Finland and the changes thereof should be subjected to a more extensive study, which would cover the different application and appeal stages. It would be important to carry out a separate study on the decision policies pertaining to unaccompanied minor asylum seekers.

Based on the number of negative decisions on international protection that was known at the end of 2017, the police will soon encounter considerable challenges in the enforcement of removals from the country. The police estimate that removals from the country will continue to increase in the upcoming years, and that they will become

increasingly difficult especially due to resistance from the returnees and external actors. Escort tasks are constantly appointed to new and unexperienced police officers.

The Non-Discrimination Ombudsman deems it important that the guidelines of the National Police Board on the enforcement of removals from the country are quickly updated to meet the requirements of the increasing and more difficult returns. The Ombudsman finds that the updated guidelines shall include the development measures previously presented in this chapter with regard to interpretation, communicating with the assistant and family members, informing the returnee of his/her return, and informing the reception centre of the return time.

The regulation of the National Police Board concerning the Ombudsman' right of access to information shall be complied with. The presence of an independent monitor in involuntary returns increases the transparency of authority operations, improves the legal protection of the returnees, dispels suspicions related to authority operations, and prevents the spreading of false information. The Non-Discrimination also deems it important to investigate different possibilities to enable post-return monitoring.

The Finance Committee emphasised in its report (VaVM 22/2017 vp) on the 2018 Budget that it must be ensured in the public finances plan drafted in the spring of 2018 that the statutory task of the Non-Discrimination Ombudsman is allocated sufficient and permanent appropriations. The budget frame shall also otherwise include provisions for upcoming monitoring tasks and the related budgetary needs.

The Non-Discrimination Ombudsman proposes the following to the Parliament

RECOMMENDATION 2:

PREPARATION OF AMENDMENTS TO THE ALIENS ACT

Provisions should be laid down on distributing the burden of proof between the asylum seeker and authority, and legislative amendments should be aimed particularly at safeguarding the application of Article 4(4) of the Qualification Directive (2011/95/EU) so that a previous infringement experienced by an asylum seeker is considered as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

The right to family life should be equally provided for persons with refugee status and subsidiary protection status without requiring them stable and regular resources in their family reunification applications as the requirement could lead in practice to discrimination on economic grounds. Particular attention should be paid to the child's right to family life and to parental care. At least the more favourable treatment applied to refugees should be extended also to the beneficiaries of subsidiary protection as there is no justification for their differential treatment.

RECOMMENDATION 3:

PREPARATION OF AMENDMENTS TO THE RECEPTION ACT

The impacts of the Reception Act on the increase in the number of persons residing in the country without a residence permit should be examined, and the necessary legislative amendments should be implemented to ensure that the reception services would not be terminated before the decision to remove a person refused an asylum from the country can be enforced.

RECOMMENDATION 4:

ASSESSING THE IMPLEMENTATION OF A FIREWALL FOR IRREGULAR MIGRANTS

Persons staying in the country without a residence permit should be guaranteed a possibility to deal with authorities without having to fear the enforcement of removal from the country as a result of the service situation.

RECOMMENDATION 5:

LAYING DOWN PROVISIONS FOR INDISPENSABLE CARE AND SUBSISTENCE

Provisions on the indispensable care and subsistence referred to in section 19 of the Constitution, to which all individuals – including irregular migrants – have the right, should be laid down in legislation.

RECOMMENDATION 6:

ALLOCATING PERMANENT RESOURCES TO THE NON-DISCRIMINATION OMBUDSMAN'S TASK OF MONITORING THE ENFORCEMENT OF REMOVAL FROM THE COUNTRY

Permanent resources should be reserved in the plan for public finances for the statutory task of the Ombudsman.

4. Justice for victims of human trafficking
 - The Non-Discrimination Ombudsman as the National Rapporteur on Trafficking in Human Beings

4.1. TASK AND OPERATING CONDITIONS OF THE NATIONAL RAPPORTEUR ON TRAFFICKING IN HUMAN BEINGS

4.1.1. INTRODUCTION

Under the Act on the Non-Discrimination Ombudsman, the Non-Discrimination Ombudsman acts as the National Rapporteur on Trafficking in Human Beings. National reporting on human trafficking was added to the Ombudsman's (former Ombudsman for Minorities) tasks on 1 January 2009. The Ombudsman monitors phenomena related to human trafficking, prepares and commissions reports pertaining to human trafficking and the related phenomena, and supervises within her competence the compliance with international human rights obligations and the efficiency of legislation in Finland. The Ombudsman may also provide legal assistance and, in exceptional cases, assist victims of human trafficking in court. As the National Rapporteur on Trafficking in Human Beings, the Ombudsman has extensive rights to access information.

The Ombudsman's mandate as the National Rapporteur on Trafficking in Human Beings is extremely broad, and it stretches from monitoring the operation of authorities and other bodies that conduct tasks related to human trafficking all the way to international co-operation. The monitoring task is targeted at, for example, compliance with international human rights obligations pertaining to human trafficking, and the effectiveness of national legislation. As the Rapporteur, the Ombudsman is obliged to provide the Government and the Parliament regularly with a report on human trafficking and the related phenomena. In addition, the Ombudsman monitors the situation constantly, provides actors that conduct tasks related to human trafficking with advice, proposals and recommendations, and expresses her opinion on shortcomings observed in action against human trafficking also beyond the published reports and studies.

When the Ombudsman started her task as the National Rapporteur on Trafficking in Human Beings in 2009, she studied what is known of human trafficking in Finland, how extensive a crime human trafficking is in Finland, how well the authorities can identify human trafficking,

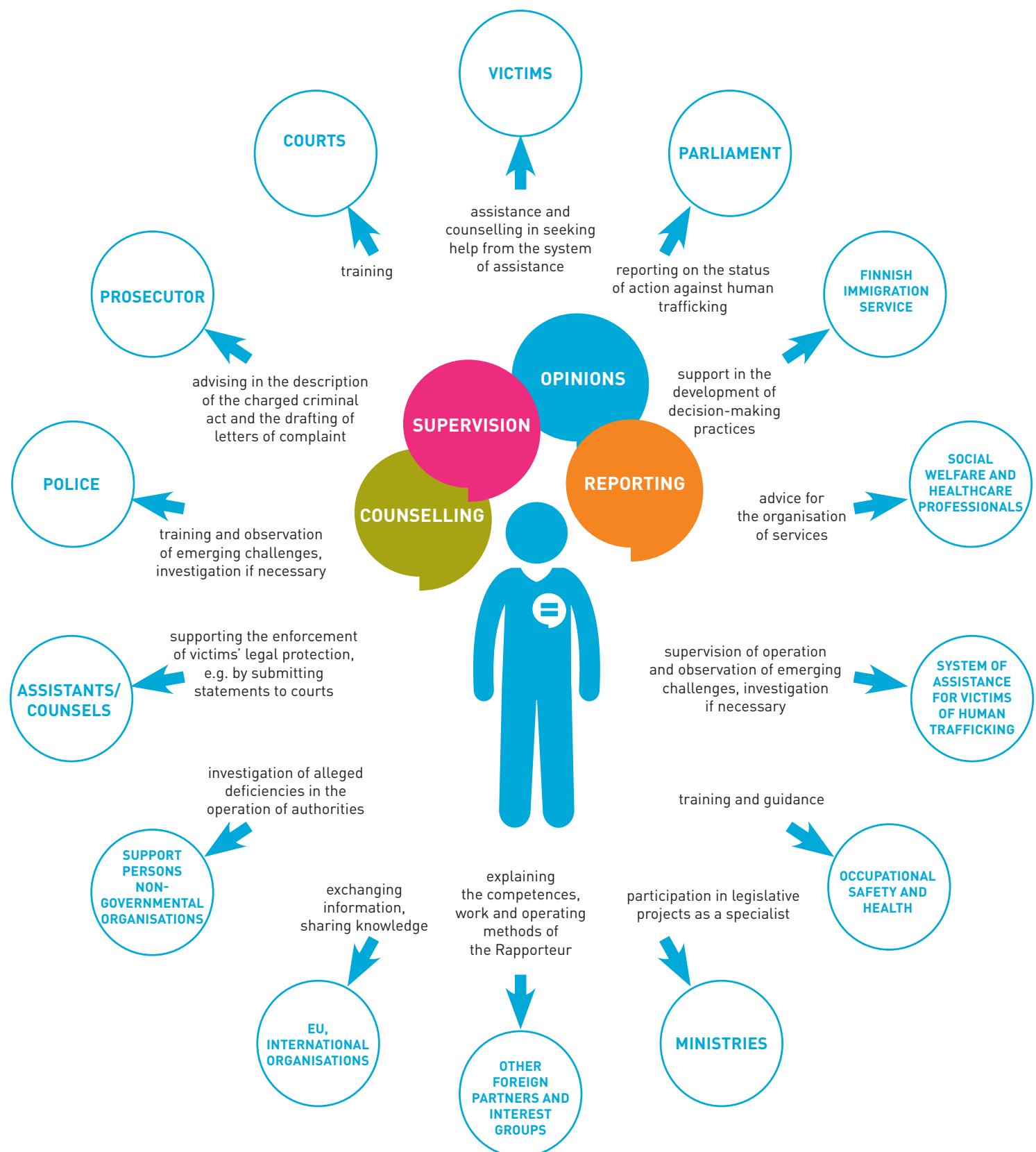
and how the rights of victims of human trafficking, provided in international conventions, EU law and Finnish legislation, are implemented. In her first report on human trafficking to the Parliament in 2010 the Ombudsman found that the most considerable challenge in Finland's action against human trafficking is identifying the victims of human trafficking: victims of human trafficking were not necessarily identified at all, or they were not identified as victims of human trafficking but of another crime. The Ombudsman reported that, as result of the lack of identification, the rights of the victims of human trafficking are not realised, and it becomes increasingly difficult to prosecute the actors guilty of human trafficking and to prevent human trafficking.

The system of assistance for victims of human trafficking began its operation in 2006, but only a few people were referred to the system each year at the early stages. At that time, only one final judgement had been rendered on human trafficking. The situation has changed since. Action against human trafficking has been developed in Finland as a result of persevering work. There have been distinct improvements in the identification of victims of human trafficking, and criminals are brought to justice more often. Although the majority of the identified victims of human trafficking are of foreign origin, the Finnish authorities are now also acknowledging internal human trafficking where the victims as well as the perpetrators are Finnish citizens. Finnish women and girls are also taken abroad to be subjected to sexual abuse. The Ombudsman is currently acting as the legal aid counsel for victims of one such case.

In her previous reports to the Parliament, the Ombudsman has, among other things, assessed the application and interpretation of the provisions on human trafficking laid down in the Criminal Code. Based on the recommendations included in the reports, the Parliament has required the Government to prepare legislative

THE NON-DISCRIMINATION OMBUDSMAN'S TASK AS THE NATIONAL RAPPORTEUR ON TRAFFICKING, AND HER COOPERATION WITH DIFFERENT BODIES

Some examples of the cooperation between the National Rapporteur on Trafficking and different actors.



amendments with the primary purpose of enhancing the identification of human trafficking in the criminal proceedings and of promoting the more efficient prosecution of persons guilty of human trafficking.

This report focuses on the effectiveness of legislation that applies to the assistance of victims of human trafficking. A well-functioning system of assistance for victims of human trafficking is a prerequisite for efficient action against human trafficking. To enforce criminal liability, the state must provide the victims of human trafficking with assistance and protection against the perpetrators.

In addition, the report underlines two other significant development targets that have emerged in the last four years. The first one concerns the Aliens Act, and the second the coordination of action against human trafficking. In 2016, the Ombudsman has analysed the application of the Aliens Act, the significance that falling victim to human trafficking has in an asylum and residence permit process, and the responsibility of the state in preventing re-victimisation. On the basis of this study, recommendations are provided for amendments to the Aliens Act. Finally, the results of the coordination structure for action against human trafficking, initiated in 2014, are evaluated, and recommendations are given to strengthen this operation.

4.1.2. OPERATING CONDITIONS

The Non-Discrimination Ombudsman works in close co-operation with the police, prosecutors and other authorities, as well as with non-governmental organisations and lawyers who provide victims with assistance, both at the individual level and at a broader structural level. The Ombudsman has conducted studies, participated in legislative and development projects, provided training, intervened in flaws detected in individual cases of human trafficking, and issued instructions, proposals, statements and recommendations to develop the action against human trafficking and to promote the rights of the victims. Furthermore, the Ombudsman has worked in close international collaboration aimed at exchanging information and views regarding well-functioning and effective work against human trafficking. During the years, the Ombudsman has been the subject of international interest. The Finnish model, based on an autonomous and independent authority, is considered by several

international organisations to be a desirable way of organising the national reporting on human trafficking.

Improved identification of human trafficking and the development of action against human trafficking are seen in the Ombudsman's office as a distinct increase in contacts from customers and authorities. As the workload increases, the current resources are no longer sufficient to meet the information and support-related needs of the actors working to fight human trafficking, especially since the Ombudsman also aspires to secure the superior quality of the reporting and research activities. Commissioning reports is one of the tasks of the Ombudsman. Targeted information is needed to support decision-making and to develop the structures and legislation concerning action against human trafficking. The project included in this report was also funded from the Finnish Government's analysis and research appropriations (TEAS).

Due to the limited nature of available resources, the Ombudsman can only rarely use her statutory possibility of assisting a potential victim of human trafficking in securing their rights. Criminal investigations and legal proceedings concerning human trafficking are often extensive, lengthy and demanding, simply because case law on the criteria of the Criminal Code is still limited and the legislation recent. The Ombudsman's expertise could be applied more often, as there are still only few lawyers specialised in human trafficking and the related expertise is often weak. The Ombudsman regularly receives requests from victims of human trafficking to assist them in the criminal proceedings, but the Ombudsman is not able to take on the assistance duties due to limited resources.

To produce analytical information to support decision-making and to assist victims of human trafficking in implementing their rights for example in the criminal proceedings, sufficient resources should be allocated to the Non-Discrimination Ombudsman acting as the National Rapporteur on Trafficking in Human Beings.

DEVELOPMENTS IN THE ACTION AGAINST HUMAN TRAFFICKING IN FINLAND

• EU Framework Decision on combating human trafficking (2002/629/JHA)	2002					
• EU Directive concerning the position of victims of human trafficking (2004/81/EC) • Human trafficking is made punishable by law	2004					
• The first action plan against human trafficking is adopted	2005	2				
• Finland ratifies the Palermo Protocol on trafficking in persons (SopS 70-71/2006) • Provisions on residence permits for victims of human trafficking and the reflection period are added to the Aliens Act (amendment of the Aliens Act) • District Court issues the first sentence for human trafficking	2006	4	7			
• System of assistance for victims of human trafficking begins its operation • Court of Appeal issues its first sentence for human trafficking	2007	3	0			
• Government action plan against human trafficking is issued	2008	6	5			
• Ombudsman for Minorities (currently Non-Discrimination Ombudsman) begins work as the National Rapporteur on Trafficking in Human Beings • Ombudsman starts co-operation with the system of assistance for victims of human trafficking	2009	14	3	0		
• Ombudsman submits her first report to the Parliament • Ombudsman initiates closer co-operation with the police	2010	23	13	2	0	
• EU Directive on preventing and combating trafficking in human beings (2011/36/EU) • Ombudsman's recommendation: The Ministry of Justice sets a working group to prepare amendments to the Criminal Code • Ombudsman engages in closer co-operation with the Finnish Immigration Service • Ombudsman engages in closer co-operation with the Occupational Safety and Health Administration	2011	80	30	3	1	
• Finland adopts the Council of Europe Convention on Action against Trafficking in Human Beings (SopS 43-44/2012) • Ombudsman's recommendation: The Ministry of the Interior shall appoint a working group to draft a proposal for a special act on human trafficking • The police issue instructions on investigating human trafficking offences • Ombudsman's recommendation: The Occupational Safety and Health Administration provides instructions on identifying human trafficking and referring victims to the system of assistance	2012	88	25	7	7	15
• Ombudsman's recommendation: The Ministry of the Interior appoints a working group to prepare the coordination of action against human trafficking in the Government • Ombudsman submits her report on the compatibility of Finnish action against human trafficking with the Council of Europe Convention on Action against Trafficking in Human Beings	2013	108	21	7	4	11
• Ombudsman's recommendation: The Government coordinator of action against human trafficking begins work • First visit to Finland by GRETA, the supervisory body monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings • Ombudsman submits her second report to the Parliament • Supreme Court issues its first sentence for human trafficking	2014	85	20	5	0	26
• Ombudsman's recommendation: amendments to the Criminal Code and the act on assisting victims of human trafficking enter into force • GRETA issues recommendations for Finland	2015	88	30	7	7	11
• Ombudsman publishes the study on practices in applying the Aliens Act on victims of human trafficking	2016	167	72	8	6	17
• Ombudsman's recommendation: the Finnish Immigration Service reforms its practices in the handling of residence permit applications of victims of human trafficking	2017	245	71	5	*	18



= Customer volume of the system of assistance for victims of human trafficking



= Charged brought under the category of human trafficking



= Asylums and residence permits granted for victims of human trafficking



= Investigated offenses under the category of human trafficking



= Sentences under the category of human trafficking

* = number of human trafficking sentences issued in 2017 is not yet known

On the other hand, the Ombudsman's right of access to information seems to constitute another challenge for the operating conditions of reporting on human trafficking. The Parliament has deemed the Ombudsman's rights to access information important in her work as the National Rapporteur on Trafficking in Human Beings (TyVM 15/2008 vp, TyVM 16/2014 vp). In practice, acquiring information especially from certain criminal investigation authorities and municipal health and social services has proven to be occasionally problematic. In these cases, the Ombudsman has considered it important to determine if the criminal investigation authorities have complied with the legislation applicable to them and with the international obligations. Furthermore, the health authorities of certain municipalities have refused to provide the Ombudsman with information necessary to assess how the right of the victims of human trafficking to receive services referred to in the so-called Reception Act is enforced in the municipalities.

The broad right of access to information secures for its part the Ombudsman's ability to act efficiently, reliably and effectively. The right of access to information is a prerequisite for the Ombudsman to fulfil her statutory obligations as the National Rapporteur on Trafficking in Human Beings.

4.2. UNKNOWN FUTURE: REPORT ON VICTIMS OF HUMAN TRAFFICKING AS BENEFICIARIES OF ASSISTANCE PROCEDURES

4.2.1. INTRODUCTION

The Non-Discrimination Ombudsman and the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), conducted an investigation funded by the Finnish Government's analysis and research appropriations (VN TEAS). The project was aimed at assessing how authorities apply the provisions for assisting victims of human trafficking laid down in the Reception Act (act on the reception of persons seeking international protection and on the identification of and assistance to victims of trafficking in human beings, 746/2011), and how the right of human trafficking victims to receive assistance in Finland is enforced. The application of the Reception Act was evaluated as three entities: identification of victims of human trafficking and their referral to the system of assistance; victims of human trafficking as beneficiaries of assistance; and the link between assistance and criminal proceedings.

The report focused on analysing, among other issues, who are referred and granted entry to the system of assistance for victims of human trafficking, how the victims are identified, and what kind of legal impacts the so-called actual identification has. Furthermore, the role of non-governmental organisations in the identification of victims and their referral to the system of assistance was also evaluated. The victims' access to services was evaluated considering the practical functionality of the dual (municipalities/Joutseno Reception Centre) model of assisting victims of human trafficking, and how the provided services meet the needs of the victims of human trafficking and comply with legislation. Another aim of the study was to answer questions concerning the connection between the assistance and criminal proceedings, such as what are the grounds for entering the system of assistance, when is the assistance initiated and terminated, and are victims in reality excluded from assistance if they are not identified as victims of human trafficking in criminal proceedings.

The data of the study consisted of documents collected from the Joutseno Reception Centre and municipalities in 2014–2016. The data of municipalities consisted of 36 victims of human trafficking within the assistance

system, who have been identified as victims of human trafficking in Finland and who have received municipal services. The data describes assistance measures received by the customers and the customer entries and decisions related to these customers from the three-year period of the study. In addition, the data included customer records of 30 customers for whom the Joutseno Reception Centre had been responsible in 2014–2016. Furthermore, the data included 316 decisions on acceptance to the system of assistance, 48 decisions on removal from the system of assistance, and 18 decisions on the actual identification of a victim of human trafficking from the years 2014–2016.

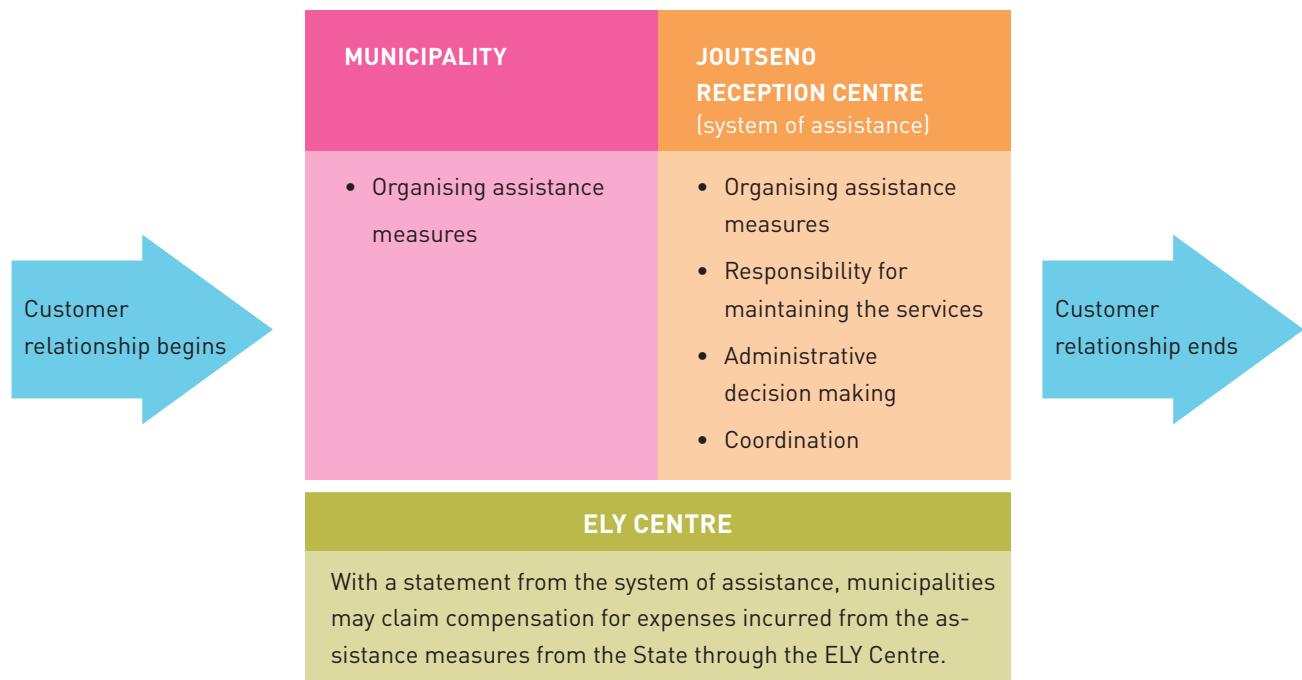
The interview material consists of a total of 46 interviews, with a total of 83 interviewees. The interviews were carried out all over Finland. The group of interviewees comprised employees of the Joutseno Reception Centre, non-governmental organisations who assist victims, municipal social services and reception cen-

tres, along with police officers, prosecutors, occupational safety and health inspectors, and representatives of healthcare services, the Finnish Boarder Guard, and ministries and government agencies. In the following, the essential findings of the study are presented with related recommendations.

4.2.2. IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING AND REFERRAL TO THE SYSTEM OF ASSISTANCE

The identification often entails a complex process that requires time and resources. Contrary to the common perception, identification is not a quick or momentary action. In some cases it can take days, months or even years for identified persons to provide a sufficient amount of information of their experiences and to give their consent to being directed to the system of assistance for victims of human trafficking. Some victims may never give their consent to being referred to the system of assistance.

SYSTEM OF ASSISTANCE FOR VICTIMS OF HUMAN TRAFFICKING:



The system of assistance refers to the system that provides the framework for organising assistance for victims of human trafficking. In Finland, the assistance of human trafficking victims is implemented as a so-called dual model, where municipalities are responsible for assisting victims of human trafficking who have a domicile in Finland. Joutseno Reception Centre is responsible for providing assistance measures for victims of human trafficking who do not have a domicile in Finland. Upon a statement issued by Joutseno Reception Centre, municipalities can be compensated by the Centres for Economic Development, Transport and the Environment (ELY Centres) for costs incurred from assisting victims of human trafficking.

According to the study, the identification of human trafficking victims and their referral to the system of assistance are hindered by different uncertainties and ambiguities. These relate to, for example, a victim's residence status, safety, children's position and situation, income or coping with everyday life. Victims may be extremely unwell mentally, and they may have diverse need of assistance. The interviewed specialists underlined that a severely traumatised person may not necessarily act logically, and his/her memory may not function normally. This may complicate both identifying the victim and helping them. Identification in organisations is hindered by the fact that organisations do not have sufficient resources for the identification work in the early stages.

Proposal and entry into the system of assistance.

According to the study, most proposals in 2014–2016 were submitted by reception centres, but more than one third of the proposed persons received a negative decision. The second highest number of proposals were submitted by the police, and almost all of these persons were admitted to the system of assistance. The number of proposals made by the Finnish Immigration Service increased considerably during the studied time period, and the majority of the Service's proposals were accepted. The number of proposals submitted by legal aid counsels was small, and more than half of the persons proposed by the counsels received a negative decision. The share of proposals submitted by organisations was small, and negative decisions were issued for approximately one fourth of the proposals.

It is not deemed difficult to propose a victim of human trafficking for entry into the system of assistance, so from this point of view the system of assistance is not difficult to access. However, the respondents expressed uncertainties as to how detailed the proposal for entry into the system of assistance should be. On the one hand, the proposal should be detailed enough for the system of assistance to evaluate the credibility of the victim's story and the victim's need of assistance. On the other hand, the interviewed organisational representatives and reception centre employees stated that an extremely detailed proposal may even harm the customer, if he/she has a pending asylum application, for example. If the proposal for the system of assistance includes descriptions or details that deviate from those expressed in the asylum interview, the customer's credibility may be questioned in the process of seeking access to the sys-

tem of assistance. The possible contradictions may also have a negative impact on the asylum and residence permit proceedings.

Within the time frame of the study, one third of persons admitted to the system of assistance were granted entry on the basis of a preliminary investigation. The distinct majority of the victims were admitted to the system of assistance on the basis of other conditions. This means that the applicants' stories contained indications of falling victim to human trafficking. Based on three-year data of the study, the majority (40 %) of all the proposals submitted for the system of assistance in 2014–2016 concerned victims of sexual abuse. The second-most common exploitative purpose was labour exploitation, which 31 per cent of the proposed persons had encountered. After these, the most common individual forms of exploitation were forced marriage and exploitation in domestic work. The number of under-age victims of human trafficking in the system of assistance has increased between 2014 and 2016.

Furthermore, the system of assistance has received proposals concerning, for example, persons forced into criminal and military activities, and persons who have fallen victim to organ trafficking or an attempt thereof. Based on the study, these other forms of exploitation included in human trafficking are still poorly identified as human trafficking in authority operations. Of all the persons proposed for the system of assistance for the victims of human trafficking in 2014–2016, 65 per cent had an asylum-seeker background.

In 2014–2016, a total of 75 per cent of the proposed victims were admitted to the system of assistance. Out of all the persons admitted to the system of assistance, 38 per cent were of Nigerian origin, and almost all of them had experienced sexual abuse in Italy, Spain or Greece. Some of the decisions on entry into the system of assistance, including the negative decisions, are taken without meeting the victim. According to the study, 44 per cent of the persons who were refused entry into the system were victims of sexual abuse. The majority of them are women who have fallen victim to human trafficking abroad, and have also applied for asylum in Finland. The exploitation experienced by these persons is generally not investigated in Finland, and, according to the study, this would seem to affect their entry into the system of assistance, as well.

The study corroborates the perception that almost no such sexual abuse victims are directed to the system of assistance who would have fallen victim to human trafficking in Finland. Based on the interview data it appears that the victims of human trafficking, who have been sexually abused in Finland, do not even seek entry into the system of assistance. The interview data provides several reasons for not seeking assistance. For example, the organisational representatives consider it an essential reason that the system is not very victim-oriented, and it is strongly connected to the criminal proceedings. With a view to referring victims to the system, the interviewed organisational representatives deemed it particularly challenging that information concerning a victim admitted to the system of assistance is inevitably submitted to the police.

According to the study, one of the reasons for negative decisions have been the fact that the freedom of the applicant had not been sufficiently restricted for the exploitation to be considered to constitute human trafficking. According to the preliminary work on the Reception Act, entry into the system of assistance should, however, be granted at a low threshold on the basis of the person's own description that is considered believable and details included in the proposal. The system of assistance did not always seem to pay sufficient attention to mental coercive measures, such as exploiting the victim's dependent status and vulnerable state, in the decision-making concerning entry into the system. In addition, the system of assistance often requires additional information from other authorities before taking a decision on entry into the system of assistance. The request for additional information should not lead to the threshold for entry into the system being elevated above the limits laid down in legislation. The core features should always consist of evaluating the victim's overall situation and need for assistance at the time.

Actual identification of victims of human trafficking.

Under the Reception Act, the system of assistance for victims of human trafficking has the right to actually identify a person as a victim of human trafficking in certain restricted situations. The majority of victims brought in for identification are identified as victims of human trafficking, which entitles them to assistance measures through the system of assistance. According to the study, actual identification decisions have been taken based on

the fact that no criminal investigation has been initiated in Finland under the title of human trafficking, but there has still been justified cause to believe that the person has fallen victim to human trafficking abroad, for example. However, only a few actual identification decisions have been taken by the system of assistance so far.

SECTION 38 OF THE RECEPTION ACT: ACTUAL IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING:

A victim of human trafficking is identified by a criminal investigation authority or a prosecutor upon initiating a criminal investigation on a human trafficking offence, referred to in section 3 or 3a of chapter 25 of the Criminal Code [39/1889], to which the identified person has potentially fallen victim.

The Finnish Immigration Service identifies victims of human trafficking and issues them with residence permits under section 52a(2) of the Aliens Act.

Joutseno Reception Centre can identify a victim of human trafficking after hearing the multidisciplinary expert group referred to in section 38c, provided that:

- 1) a criminal investigation authority or prosecutor has decided not to initiate a criminal investigation in Finland, but there are well-founded reasons for considering that a person admitted to the system of assistance has fallen victim to human trafficking abroad; or
 - 2) a decision concerning the interruption or conclusion of a criminal investigation shows that the person must be deemed a victim of human trafficking but the matter could not be referred to a public prosecutor for handling, because there is no individual to prosecute.

The study showed that even the system of assistance finds the application of the legislation on actual identification challenging. The representatives of the system of assistance found the legal impacts of the actual identification decisions ambiguous, and the law does not lay down provisions on the termination or cancellation of actual identification. The only legal impact of actual identification made by the system of assistance seems to be that the victim of human trafficking becomes a customer

of the system of assistance until they are removed from the system. Actual identification does not have any other legal impacts, which increases the unpredictable nature of the system. Based on the study it is apparent that the current provisions on actual identification should be developed towards a more predictable process and end result.

According to the Reception Act, the system of assistance is supported by a multidisciplinary expert group. The expert group includes representatives of the police and social welfare services, for example. Based on the study, the multidisciplinary expert group appears to have a significant role in the procedure concerning the actual identification of victims. Under the law, the expert group is appointed with the task of supporting the system of assistance in decision-making and in assessing the assistance measures and protection required by the victims. The statements of the multidisciplinary expert group are based on documentation and descriptions provided by the system of assistance. The expert groups is not able to adequately evaluate a victim's de facto situation, victimisation, credibility of the victim's description, and the victim's need of assistance, as the group does not meet or hear the victims.

4.2.3. CHALLENGES FOR IDENTIFICATION

According to the study, only a small number of victims are referred to the system of assistance by organisations. This may be a result of decreasing and weakening co-operation between the system of assistance and organisations, as reported by the interviewees. According to some of the interviewed organisational employees, the collaboration between organisations and the system of assistance used to be more genuine team work in the past years, with more dialogue and interaction between the organisations and the system of assistance. The deteriorating co-operation was explained with, for example, the increase in the customer numbers of the system of assistance, and the assistance measures being more tightly connected to the criminal proceedings.

It emerged in the study that several organisations working with victims of human trafficking question the ability of the system of assistance for victims of human trafficking to provide victims with the kind of help they believe the victims need. According to the interviewed organisational representatives, the decision to refer a victim to the system of assistance is not always easy for the customers themselves, nor for the organisational employees.

The organisations consider the implications a proposal for the system of assistance would have for the customer, and the impact a proposal would have on, for example, criminal and asylum proceedings. Some of the organisational representatives interviewed for this study do not consider the system of assistance to be genuinely victim-oriented, but rather an “assistance system for prosecuting perpetrators”.

The authorities' goal of imposing criminal liability on persons guilty of human trafficking was also highlighted in the documentation and interview material concerning the reform of the Reception Act. According to the documented material concerning the interviews and the bill drafting, the central problem of the system of assistance seems to be the tightly intertwined relationship between assistance and criminal proceedings. The system of assistance covers human trafficking that the authorities are already aware of, and the system can provide assistance particularly to victims who are prepared to share their experiences with the criminal investigation authority as early as at the referral stage.

According to the study, identification may also be hindered by the fact that the municipal employees' perceptions of human trafficking may be inconsistent with the reality, and many consider human trafficking a very strange and distant matter. Not all social welfare and healthcare units or police departments have sufficient vocational competence and understanding of the human trafficking phenomenon. Municipal social welfare and healthcare services do not have sufficient knowledge of the system of assistance for victims of human trafficking, and of the fact that the system offers guidance for identifying and assisting victims of human trafficking. Hardly any victims have been identified in social welfare services; instead, the victims are usually referred to municipal social welfare services from the system of assistance. Only individual proposals to the system of assistance have been made by municipalities. The identification of victims of human trafficking in municipalities may be hindered by the massive customer pressure placed on municipal social work, as it can, at worst, lead to the municipalities not wanting or daring to identify a victim of human trafficking. The municipal employees may fear that investigating the victim's affairs and providing them with concrete assistance may take too large a share of the available working hours, and, as a result, the victim may be left unidentified.

With regard to victims of human trafficking with an asylum-seeker background, it may take a long time before a customer is willing or able to share their experiences with an employee at the reception centre. The results of the study underline that the building of trust is a prerequisite for identifying victims of human trafficking, also among asylum seekers. Identification may become more complicated if the customer of a reception centre is scheduled an asylum interview so quickly that there is not enough time to investigate the person's possible background of falling victim to human trafficking. It was also pointed out in the social welfare services that to build trust between an employee and a customer of ethnic origin in particular, it is essential that the employee keeps their word and makes their work as transparent as possible. This may mean, for example, that the customer is involved in the different processes of the customer work, and knows the details that are entered into the information systems.

SECTION 36 OF THE RECEPTION ACT: RECOVERY PERIOD AND LEGAL IMPLICATIONS THEREOF

In connection with the decision-making on entry into the system of assistance, a victim of human trafficking who is a Finnish citizen or a foreign national residing legally in Finland in any of the ways referred to in section 40 of the Aliens Act may be granted a recovery period of 30 days. The recovery period may be extended with at most 60 days, if so required by the individual conditions of the victim of human trafficking. The recovery period shall be disrupted if the victim is removed from the system of assistance under section 38f.

Once the recovery period ends, the director of the Joutseno Reception Centre is obligated to inform the police, notwithstanding the secrecy provisions, of the victim of human trafficking and of the decision to admit the victim into the system of assistance, and provide the police with necessary information referred to in section 37.

SECTION 52B OF THE ALIENS ACT: REFLECTION PERIOD FOR A VICTIM OF HUMAN TRAFFICKING RESIDING WITHOUT RESIDENCE PERMIT IN THE COUNTRY

Before issuing a residence permit laid down in section 52a, a reflection period of at least thirty days and a maximum of six months may be granted to a victim of trafficking in human beings.

The study also examined reflection and recovery periods, the granting of these periods, and their practical implications for the victims. The study showed that, so far, considerably few reflection and recovery periods have been granted. The interviewed organisational representatives had a somewhat critical view on these periods: the regulations and procedures regarding the reflection and recovery periods do not work, and their purpose is not fulfilled. In the opinion of the organisational representatives, the legal provisions on reflection and recovery periods and their application do not allow for genuine reflection and recovery. This is because information concerning the victim is transferred from the system of assistance to the criminal investigation authorities either way, regardless of the decision made by the victim during the reflection and recovery period and of whether or not the victim can or dares to share their experiences with the criminal investigation authorities and to initiate criminal proceedings in the matter.

Another emerging issue in the study was that some of the interviewed criminal investigation authorities and prosecutors were not aware of the legal provisions on reflection and recovery periods. Some of the operators in the criminal justice system deemed the reflection and recovery period problematic for the legal protection of the accused. However, the respondents did not express any practical situations or cases where these concerns would have been realised.

4.2.4. ASSISTING VICTIMS OF HUMAN TRAFFICKING AND AVAILABILITY OF ASSISTANCE

Under the Reception Act, victims of human trafficking have a special status as beneficiaries of services. Joutseno Reception Centre shall arrange assistance measures for victims of human trafficking who do not have a municipality of residence in Finland as referred to in the Municipality of Residence Act. Municipalities are responsible for organising assistance measures for victims of human trafficking who are Finnish citizens or who have a municipality of residence in Finland as referred to in the Municipality of Residence Act. In the Act, assistance measures refer to services and support measures provided for the victims of human trafficking, which are defined in detail in section 38a of the Reception Act. In this report, the assistance system refers to an entity formed by the Joutseno Reception Centre and the municipalities, through which victims of human trafficking are provided

with assistance measures. The system of assistance for victims of human trafficking also refers to responsibility for the maintenance and coordination of the system and for administrative decision making.

Not all victims of human trafficking with an asylum-seeker background are placed in Joutseno Reception Centre. Based on the study, assistance measures for asylum seekers are provided by, instead of Joutseno Reception Centre, the reception centre in which the victim is placed. In the view of the system of assistance, these reception centres are also in charge of drafting service plans that include assistance measures for those customers of the system of assistance, who are staying at other reception centres. As beneficiaries of assistance measures, the equality of human trafficking victims placed in reception centres should be improved in relation to the customers of the system of assistance who are staying at Joutseno Reception Centre.

As result of the Reception Act reform, the provisions on assisting victims of human trafficking shall be applied to all victims of human trafficking, regardless of whether or not they have a municipality of residence in Finland. It is found in the preparatory legislative work that the duties and responsibilities related to assistance measures are distributed between Joutseno Reception Cen-

tre and municipalities on the basis of the person either having a Finnish domicile referred to in the Municipality of Residence Act or not. According to the study, however, the Act and the preparatory legislative work are somewhat ambiguous regarding the specification of the system of assistance, the organisation of assistance measures in municipalities, and the role of Joutseno Reception Centre in relation to assistance work taking place in municipalities.

The Reception Act is interpreted in this study in such a way that the system of assistance for victims of human trafficking consists of an entity with two authority operators in charge of organising the services: Joutseno Reception Centre and municipalities. The study shows that at the legislative level the status of Joutseno Reception Centre and municipalities is not equal. The municipalities are imposed with a statutory responsibility to organise assistance measures for victims of human trafficking who are either Finnish or have a domicile in Finland, but these provisions have been placed in an act which the municipal social welfare and healthcare professionals do not normally apply in their daily work. Implementation of the law is hindered by the fact that the Ministry of Social Affairs and Health has not instructed the municipalities in the organisation of assistance measures, as was suggested in the preparatory work on the Reception Act.

ORGANISING ASSISTANCE MEASURES FOR VICTIMS OF HUMAN TRAFFICKING

MUNICIPALITY	JOUTSENO RECEPTION CENTRE (system of assistance)	RECEPTION CENTRE
<p>Municipal residents</p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> • Finnish citizens • EU citizens • Applicants of continuous residence permit 	<p>Non-municipal residents</p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> • Third-country nationals • Undocumented residents 	<ul style="list-style-type: none"> • Asylum seekers

Municipalities are responsible for assisting victims of human trafficking who have a domicile in Finland. Joutseno Reception Centre is responsible for providing assistance measures for victims of human trafficking who do not have a domicile in Finland. Asylum seekers receive basic assistance measures from the reception centre where they are placed (housing, social and healthcare services and reception allowance). Joutseno Reception Centre may provide asylum seekers with assistance measures due to their victim status. The different victim groups in the picture are only examples.

Finland differs from many other European countries in that organisations have a relatively small role in assisting victims of human trafficking, and the assistance is built on authority operations. In several European countries, the services provided for victims of human trafficking are produced by non-governmental organisations specialised in assisting victims of human trafficking. Often the assistance includes 24-hour supported housing, social welfare and healthcare services, and psychological support for the victim. The assistance model led by authorities has its upsides: funding is relatively secure and the authorities are liable for their work. The work of authorities is reasonably transparent, it can be monitored more easily than the work of NGOs, and any defects in authority operations can be intervened in, for example, because the authorities' administrative decisions can be appealed.

On the other hand, the study shows that not all victims of human trafficking receive assistance. Based on the interview data, some victims of human trafficking do not seek entry into the assistance system. Many victims may find assistance provided for human trafficking victims by authorities intimidating. The victims may have lived on the margins of society for a long time, they may have committed crimes themselves, and it may be difficult for them to trust authorities. The victims may be ashamed of falling victim to exploitation, in which case the threshold for sharing one's experiences with authorities may be high.

The study shows that there are victims in organisational services who do not dare seek help from the system of assistance for another reason: the valid legislation and its application procedures have linked the actual availability and duration of assistance closely to the initiation and progression of criminal proceedings and to the end result of the process. Based on the study, this connection appears to have an impact on whether or not victims dare to seek help from the system of assistance and, consequently, from authorities.

The victims of human trafficking who are excluded from the system of assistance are extremely vulnerable to re-victimisation, and they may be subjected to continued exploitation in the absence of adequate services. The victims and their potential children are vulnerable to different forms of exploitation.

Based on the study, improving the operational conditions of organisations would be one way to support these individuals, put an end to their exploitation, and prevent their re-victimisation. Organisations have a significant role in providing assistance for victims of human trafficking, but their status has not been adequately recognised at the legislative level. At the moment, the possibilities of organisations to assist the victims is not fully utilised. Furthermore, the organisations could act as a bridge between the victims and authorities, increasing the victims' confidence in the authorities. It is societally important that the victims receive some form of assistance instead of living completely outside the official society.

4.2.5. ASSISTANCE FOR VICTIMS

According to the study, there is a distinct need for the work carried out by the system of assistance. The majority of persons interviewed in the study considered it positive that the system of assistance for victims of human trafficking exists. It is important to have a system with in-depth expertise in assisting victims of human trafficking and knowledge of the needs of human trafficking victims and of how these needs should be met. The criminal investigation authorities, in particular, praised the system of assistance and considered their co-operation to function well. The interviewed criminal investigation authorities underlined that the system of assistance supports the work of the police by taking care of the victim of human trafficking, so that the police can focus on conducting the criminal investigation on the matter. The representatives of social welfare services and the reception centre employees also had a primarily positive view of the co-operation with the system of assistance.

The system of assistance for victims of human trafficking has a significant role in distributing legal and other information related to human trafficking, and in co-ordinating the assistance provided for customers and the authority operations in Finland. The system of assistance co-operates closely with other authorities and certain organisations. The employees of Joutseno Reception Centre travel all around Finland and participate in networking meetings and meetings concerning individual customers in municipalities, for example. It emerged in the interviews that the geographic location of the system of assistance in Eastern Finland poses challenges for everyday social welfare and healthcare services,

particularly in relation to face-to-face customer work and co-operation with interest groups. Placing one employee of the system of assistance in Oulu has improved co-operation especially in Northern and Western Finland. As a result, more customers from Lapland have been referred to the system of assistance.

It also became apparent in the interviews that there is room for improvement in the flow of information between the operators, and that some municipal social workers were hoping for more active spontaneous communication from the system of assistance. According to the study, the Joutseno assistance system works in close co-operation especially with Victim Support Finland. On the other hand, it turned out that co-operation with other organisations had been reduced or even discontinued. The study shows that the workload of the system of assistance has increased, and the personnel resources currently available are insufficient.

According to the study, Joutseno Reception Centre is providing good customer service when it is responsible for organising assistance measures for victims of human trafficking. Based on the study, Joutseno Reception Centre and its employees come across as competent and dedicated to their work. On the basis of the study, the victims for whom Joutseno Reception Centre itself organises services primarily get the help they need. Customer work at Joutseno Reception Centre is a demanding and considerably burdening job performed among persons who are in a very difficult position and have been traumatised.

It became evident in the study that NGOs are doing a lot of work to make up for deficiencies and limited resources in authority operations, with regard to the practical everyday assistance provided for victims of human trafficking. NGOs are assisting customers in official proceedings and performing customer-oriented social work. Out of all the organisations, Victim Support Finland in particular plays an essential part in assisting victims of human trafficking. The study showed that in some municipalities Victim Support Finland works in close co-operation with the municipal social services by providing the employees of social welfare services with advice and assisting the victims with practical matters. Some of the social welfare service representatives interviewed in the study viewed Victim Support Finland as

a more clear and tangible provider of assistance for victims of human trafficking than the actual system of assistance. Furthermore, parishes and religious communities may also in certain areas have an important role in providing victims with everyday assistance.

Many victims are in need of comprehensive support and secure, supported housing, which means that there are staff members present around the clock. There are relatively few such service providers in Finland in relation to the actual need, and the current forms of supported housing are not suitable for all victims of human trafficking, such as male victims. Victims of human trafficking have been accommodated in emergency housing centres, rental apartments, mother and child homes, reception centres, and shelters for the homeless and persons with substance abuse problems. Based on both the interviews and the documentation, it is obvious that Finland does not have an adequate amount of 24-hour, secure and supported housing options available for victims of human trafficking. The victims of human trafficking are individuals with different needs. Therefore, there should be different forms of supported and secure housing available for them. Many victims of human trafficking have been severely traumatised and are in need of intensive support, and some are subjected to severe security threats, as well.

The National Institute for Health and Welfare (THL) has drafted application instructions for the existing act on shelters. The instructions state the shelters shall not be used as accommodation for victims of human trafficking, unless the human trafficking involves intimate partner violence. The study produced several examples where authorities (social workers, police, occupational safety) had trouble finding suitable emergency accommodation for identified victims of human trafficking, especially outside office hours. Furthermore, the interviewed reception centre employees expressed a need for smaller reception centres, where the personnel would be specialised in assisting victims of human trafficking, and which would have more resources to examine a customer's situation.

The possibility to work is important for the victims to recover and lead a meaningful life. However, there are many legal provisions hindering the possibilities of human trafficking victims to become integrated into employment. The study highlighted also several other challenges

which concern other asylum seekers, as well. For example, a refused asylum application discontinues the right to work, even in cases where the person submits a new asylum application. When the residence permit process is pending, it may be difficult to work or accept a job because children do not usually receive a municipal day-care place if the parent does not have a continuous residence permit. In addition, victims of human trafficking are at risk of being exploited in the Finnish labour market, as they in general do not know the administrative system and are not aware of the rights and obligations of their own and of the employer. Based on the study, the victims of human trafficking who were exploited at work seem to integrate into the society and find employment more easily than victims with foreign background who have been subjected to sexual abuse. This may be due to psychological symptoms caused by the sexual abuse.

According to the study, the majority of the customers of the system of assistance for victims of human trafficking had an asylum-seeker background at the time when the study was conducted. The considerable share of asylum seekers among the clientele of the system of assistance can surely to some extent be explained by the changes in the global situation and the general increase in the number of migrants within the European Union. Based on the study, the asylum process includes also persons who could primarily apply for a residence permit as victims of human trafficking and for a customer relationship in the system of assistance for victims of human trafficking.

The system of assistance has very little to offer for victims with asylum-seeker background in comparison to the services they receive either way as asylum seekers. It emerged in the study that the interviewed reception centre employees viewed the psychiatric and psychological assistance and the related services provided by the system of assistance as the most essential and concrete benefits offered by the system of assistance. However, the interviewed reception centre employees did not consider the benefits of the system of assistance to be significant for their customers in relation to what they already get at the reception centre as asylum seekers. On the other hand, victims of human trafficking may be in need of psychological assistance, but reception centres (especially transit centres and detainment units) are not capable of providing them especially with long-term treatment or therapy.

According to the study, victims of human trafficking admitted to the system of assistance have, as a consequence of the Dublin Regulation or a refusal of asylum or residence permit, been returned to their country of origin or to another country within the European Union. In these situations, the system of assistance has attempted to provide the persons with a safe and supported return, but it has been difficult because the decisions on removal from the country have been enforced very quickly. Consequently, the system of assistance has not always had time to organise an adequate support structure for the customer in the receiving country. The aim has been to provide the customer with the contact information of authorities or organisations who work with victims of human trafficking in the receiving country. The system of assistance attempts to issue an actual identification decision for these victims in the hope that the decision will provide the persons removed from the country with easier access to services aimed at victims of human trafficking in the receiving state. The competence of the system of assistance does not extend beyond the Finnish boarders.

The system of assistance removes a customer from the system, if the person leaves the country or is removed, or if the person wants to be removed from the system or has gone missing. The system of assistance also removes a customer from the system's services if it is deemed that the customer's affairs are well managed at the municipal level and that the customer's everyday life has become so stable that he/she is no longer in need of the special services offered by the system of assistance. However, transferring a person to a municipality does not, as such, constitute grounds for removal. Before the removal, the system of assistance should, in co-operation with the bodies assisting the victim, ensure that the customer no longer needs the services liable for ELY compensation to support their recovery. The connection between a removal and the criminal proceedings is discussed further in the conclusions below.

4.2.6. ASSISTING VICTIMS OF HUMAN TRAFFICKING IN MUNICIPALITIES

The study paid particular attention to the assistance provided for victims of human trafficking in municipalities. Assistance work carried out by municipalities has not been previously studied in Finland. As previously stated, the so-called dual assistance model entails that the municipal social welfare and healthcare services provide services for those victims of human trafficking who are Finnish or who have received a municipality placement after being granted a residence permit. Consequently, the municipalities are responsible for providing municipal residents with the services for victims of human trafficking. The Joutseno assistance system can advise the municipalities with regard to the special characteristics of the human trafficking phenomenon, the special needs of victims of human trafficking, and the bodies implementing the services.

The study shows that the role of the Ministry of Social Affairs and Health has become rather insignificant in the entity formed by the assistance work. It becomes evident on the basis of the documentation and interview material that the Ministry of Social Affairs and Health has viewed human trafficking as more of an internal security issue and, therefore, as a matter falling within the remit of the administrative branch of the Ministry of the Interior. Furthermore, the assistance is regulated in legislation falling under the administrative branch of the Ministry of the Interior. Despite the proposal of the legislative working group and the requirement of the Parliament, the Ministry of Social Affairs and Health has not provided the social welfare services with instructions on assisting victims of human trafficking. The Association of Finnish Local and Regional Authorities has provided the municipalities in 2016 with a circular on assisting victims of human trafficking. Based on the study, this has not, however, been transferred to the social and healthcare professionals performing the actual practical work.

It was discovered in the study that regulating the assistance provided for victims of human trafficking specifically in the Reception Act is not a completely functional solution, especially considering the victims of human trafficking who are customer of municipalities. Municipal employees do not usually apply the Reception Act in their work, but, instead, they primarily apply the Social Welfare Act. This is visible as a problem in the victims'

access to services. Based on the interviews, the municipal social workers view the victims of human trafficking mainly as being no different than the other customers of the social welfare services. Therefore, the victims of human trafficking receive the same services as any other municipal residents. The employees of municipal social welfare and healthcare services are not always aware of the existence of the Reception Act. Therefore they do not know that the victims of human trafficking have a special status as beneficiaries of services, and that it would be possible under the Reception Act to organise services in addition to those provided for in the provisions on the public social welfare and healthcare services. For these reasons, the imposed obligations of the Reception Act are weak in practice, and the Act endangers the special status of victims of human trafficking, who are Finnish citizens or staying permanently in Finland, as beneficiaries of services.

Poor awareness of the Reception Act can be seen, for example, in that the studied data did not include a single decision taken by the social welfare services, in which a municipal social welfare service would have referred to the Reception Act when making a decision on a service purchased for a customer. Under the Reception Act, municipalities are obligated to organise services for victims of human trafficking, either by outsourcing or through their own service production system. The study discovered examples where victims of human trafficking within municipal social welfare and healthcare services would have been in need of specialised medical care, but the municipality denied them these services because it found that the services in question could not be granted under the Social Welfare Act. However, providing said special services through outsourcing would have been possible under the Reception Act. The Reception Act allows for the organisation of services through, for example, outsourcing, and municipalities have the right to claim compensation for these expenses from the State (ELY Centre). These provisions apply, for example, to therapy services.

Municipal employees are not familiar with the Reception Act, its contents, or the obligations laid down in the Act. Furthermore, the relationship between the Reception Act and the general legislation applicable to the social welfare and healthcare services is unclear for the municipal operators in the social welfare and healthcare

sectors. Under international and EU law, however, the states must secure certain services for victims of human trafficking. Based on the interviews conducted in this study it seems that this special status is not always enforced, and the victims do not always receive the services to which they would be entitled. For this reason, the status of victims of human trafficking as the beneficiaries of services must be clarified and the availability of services improved.

In the Finnish municipal system, the victims are assisted under the terms of the system. The rigid service structure is difficult to adapt to the service needs of severely traumatised victims of human trafficking, who often represent foreign nationalities. The customers have poor knowledge of the Finnish society and its service system. Victims of human trafficking need particular support to recover from their abusive experiences and integrate into the Finnish society. Victims of human trafficking often need intensive social counselling just to be able to apply for the services to which they are entitled. The right of victims of human trafficking to integration services should be secured even in situations where the victims have stayed in the country for a long time, if they have not had a de facto opportunity to participate in integration services due to falling victim to human trafficking.

Dealing with public authorities is also hindered by the fact that some of the victims with foreign background do not have the documents required in the Finnish administrative operations, such as an identity document, travel document, marriage certificate or birth certificates for children.

One essential challenge for municipalities is the lack of routines, as there have been relatively few cases of human trafficking so far. When an individual municipal social worker gets the first victim of human trafficking as a customer, the social worker is in practice forced to learn the work the hard way. Therefore, it would be useful if the employees who already have experience in the matter could in some way share their experiences and knowledge with others. It became evident in the interviews that the municipal social workers are missing instructions on how to operate in cases involving human trafficking. There is a distinct need for training. The employees of municipal social welfare services have been offered training, but it has been difficult to get a suffi-

cient number of participants for the training events. It remains unclear, whether this is due to the workload of social workers, lack of interest, “does not concern me” attitude, or that the information concerning the trainings does not reach the right persons.

Victims of human trafficking who are customers of the social welfare services need an extensive amount of assistance and support in dealing with the public authorities, seeking healthcare services, acquiring an apartment, furnishing their home, taking care of their finances, applying for work, and sorting out the affairs of their children. However, the municipal social welfare and healthcare services are not always able to adequately meet the victims' mundane, practical needs for assistance.

Based on the study, the assistance for victims of human trafficking relies heavily on the ability, knowledge, energy, motivation and available time of individual social service employees. In a good situation, the customer is met by a committed social worker who knows the special characteristics of human trafficking, puts her/his mind to the customer's situation, and aspires to meet the often complex service requirements of the customer. There may be considerable differences between individual social workers, between and even within municipalities. If assistance provided for customers is dependent on the performance of an individual worker, then receiving assistance and the necessary services is arbitrary, and it is obvious that there are considerable differences in service quality, both between and within municipalities. In practice, the situation calls for more explicit instructions, training and supervision.

Some of the interviewed representatives of municipal social welfare services found that the co-operation with the system of assistance was functioning well. However, some of the interviewees did hope that the system of assistance would spontaneously and actively offer support and advice for the municipal social workers who have victims of human trafficking as their customers. In the opinion of the interviewed organisational representatives, there was variation in the collaboration with municipal social welfare and healthcare services between municipalities and individual employees. They felt that there were shortcomings in the municipalities in the expertise related to assisting victims of human trafficking. This may be explained by the lack of experience in

municipalities, as there are still only individual customers in many municipalities.

The starting point for the assistance provided for victims of human trafficking should still consist of preventing re-victimisation. It was discovered in the study, however, that some victims of human trafficking who have been granted assistance measures are believed to have fallen victim to exploitation again in Finland. Some of the re-victimised victims of human trafficking have had under-aged children with them in Finland. As single mothers who suffer from the trauma caused by sexual abuse, the victims are often struggling to cope with everyday life. Consequently, the victims' children are also in need of special support. The children's need for assistance could be best addressed when the children were admitted to the early childhood education and care system.

4.2.7. LINKING ASSISTANCE TO CRIMINAL PROCEEDINGS

The legislation pertaining to victims of human trafficking and the current application thereof demonstrate that the system of assistance is best suited to help victims whose criminal case is making progress and whose case may result in a verdict for human trafficking. If a victim of human trafficking does not dare seek assistance from authorities, there will not be sufficient evidence in the criminal proceedings of a human trafficking offence, or the court will not sentence the defendants for human trafficking. In such an event, the victim is excluded from authority assistance or the victim is removed from the system of assistance. The study shows that there are persons in Finland who are in need of assistance due to severe exploitation with characteristics of human trafficking, but who do not receive adequate assistance, or who are not referred to or admitted to authority assistance. In Finland, assisting victims of human trafficking is an activity performed by authorities. The operating conditions of organisations are, at the moment, insufficient to meet the service requirements of victims who are not initially admitted to authority assistance or who are removed from the system of assistance.

The study shows that the authority assistance provided by the system of assistance does not reach all victims of human trafficking who are in need of assistance. The strong link between the assistance and the criminal proceedings leads to a situation where the system of

assistance has been established as a body helping explicitly the injured parties in human trafficking offences. The study shows that the Reception Act and the application thereof may be incompatible with international and EU law. Based on international regulations, for example the duration of assistance may be limited on the grounds of the person's right of residence in the country and their willingness to co-operate with authorities to bring the persons guilty of human trafficking to justice. The strong link between assistance provided for legal residents and, for example, Finnish victims and the criminal proceedings is clearly a more problematic issue in the light of international and EU law.

To a certain extent, the international and EU law is always open to interpretations. It is obvious that the international obligations prohibit setting the victim's willingness or ability to initiate criminal proceedings as a prerequisite for receiving assistance. In the light of the legislative entity emphasising the assistance and protection of victims of human trafficking, this can be interpreted to mean that the initiation of criminal proceedings in general may not be set as a precondition for receiving assistance (especially) with regard to victims who have the right to reside in the country and who are Finnish citizens. With a view to the international obligations it is also clear that the termination of the identification process (actual identification) is not conditioned on whether or not a criminal investigation has been launched in the matter or if a sentence for human trafficking is ordered as a result. Also the Finnish national legislation and the preparatory work thereof start from the premise that a person may remain in the system of assistance and receive assistance measures, even though the criminal investigation on the human trafficking offence would have been terminated for some reason.

The problem arising from international and EU law is primarily related to the information emerging from the studied material, stating that, as a result of the current legislation and the application thereof, many victims of human trafficking are either refused authority assistance, or they fall off the system. When this entity is complemented with the fact that there does not appear to be adequate assistance available for the victims of human trafficking who are excluded from authority assistance, the legal state is not in full compliance with the international and EU law that is binding on Finland.

According to the study, the most central problem that the system of assistance has with regard to legislation and the application thereof is related to removal from the system of assistance. At the moment, removal from the system of assistance depends on the end result of the criminal proceedings. Removal from the system of assistance has been justified by the changing of offence category from human trafficking to some other title, bringing charges for a different offence, or the court rejecting the charges for human trafficking. In more than one third of the cases where the system of assistance has terminated a customer relationship in 2014–2016, the termination has taken place because the process of criminal investigation or consideration of charges has labelled the offence something else than human trafficking. The data of the study indicates that the termination of a criminal investigation process related to human trafficking, id est the fact that no charges are brought for human trafficking or that a court does not sentence the defendants for human trafficking, leads to the victim being removed from the system of assistance.

According to the study, it is the view of the system of assistance that if a criminal investigation authority is investigating the offence as something else than human trafficking, or if the title is changed from human trafficking to some other offence during the criminal investigation or the consideration of charges, the customer must be removed from the system. The interviews with the representatives of the system of assistance confirm that the victim's need of assistance is not the core foundation for making the decision to remove the person from the system. The system of assistance places a considerable amount of weight on the offence title selected by the police and the prosecutor. The victim is removed from the system of assistance all but automatically, if the offence is changed from human trafficking to some other title during the criminal investigation or the consideration of charges. At the same time, however, the representatives of both the system of assistance and the criminal justice system underlined in the interviews that the criminal investigation authority does not take a stand in criminal investigation on whether or not a human trafficking offence has been committed, but rather on whether the matter can be investigated further and sufficient evidence accumulated, so that the matter can be submitted for the consideration of charges and to a court for a solution.

The interviewed criminal investigation authorities and prosecutors were surprised by how significant their decisions on the initiation or progression of criminal proceedings can be on whether a victim of human trafficking receives assistance or not. The interviewed representatives of the criminal justice system claimed that their task is to evaluate the criminal evidence in a human trafficking offense and assess the adequacy of said evidence. The majority of them also assumed that the progress of the criminal proceedings and the related decisions are not connected to the assistance measures and to the victim's right to assistance. They also underlined that their basic task is to collect evidence on a suspected crime and to enforce criminal liability. It appears that the criminal investigation authorities and prosecutors are not always aware of the implications their decisions have on the victims' access to assistance. Those criminal investigation authorities and prosecutors who are aware of this connection said that they carry a heavy responsibility for the individual and often vulnerable persons' access to assistance.

Although the criminal investigation concerning human trafficking would be discontinued, no charges were brought for human trafficking, or no verdict issued for human trafficking, the study shows that the investigation may still continue under a different title, or charges can be brought or a verdict issued for some other offence. The challenge for the victims is that a person is then removed from the system of assistance. The person has been admitted to the system of assistance for victims of human trafficking because he/she is believed to have fallen victim to severe work-related, sexual or other exploitation, and the system of assistance has assessed the person to be in need of assistance due to the abuse. The grounds for admitting the person to the system of assistance have not necessarily disappeared, despite the different criminal assessments conducted after the person was admitted to the system of assistance.

The criminal proceedings may be discontinued under the title of human trafficking or completely also because there is no evidence available or the perpetrator cannot be reached. This does not mean that the person would seize to be a victim of human trafficking. This is stated also in the preparatory work on the Reception Act. The criminal justice system is based on the principle of legality and the presumption of innocence. The criminal

justice system is built on securing legal protection for persons suspected or accused of a crime. However, the principles of criminal justice seem to set limits also for assisting victims of human trafficking. In practice this means that the justified attempt to ensure the defendant's legal protection in a criminal proceeding paradoxically also determines whether the victim of the crime receives assistance or not.

The decisions to restrict or discontinue criminal investigations are taken for various reasons, for example for a lack of evidence or for cost-related reasons. In their decisions, the criminal investigation authorities do not usually express a direct opinion on whether or not the offence under investigation specifically is a human trafficking offence. The criminal investigation authorities issue their opinion on whether there is available evidence of a crime. In practice, this lack of evidence may be because the defendant cannot be heard, there are no witnesses to the matter or the witnesses cannot be identified, there is little documentary evidence to be presented due to destroyed or forged documents, or the events have taken place so long ago that the progression of the events is practically impossible to demonstrate. Furthermore, other evidence to support the case may be missing. For example, if an offence is investigated retroactively, id est the offence has already taken place and is no longer ongoing, it may be impossible to acquire other supportive evidence with the help of instruments such as telesurveillance. Therefore, in these situations the proof rests in a pronounced manner on the description of the injured party. No matter how detailed the description is, it may not necessarily suffice as the sole evidence, if the defendant cannot be summoned to court or if the defendant lies. Then it is the one party's word against the other's. Consequently, a decision to restrict or discontinue criminal investigations does not necessarily mean that the human trafficking offence claimed by the complainant did not take place.

The system of assistance should first and foremost be seen as an operator offering support services – such as social welfare and healthcare services – required by the victims. Under the Reception Act, the task of the system of assistance is to organise and produce services for the customers in need. Therefore, the system of assistance should possess sufficient skills and competence to determine who is in need of assistance due to falling victim

to human trafficking, independent of the criminal proceedings and the progression thereof. Similarly to assessing the service needs of the customers within the system of assistance, the customers' need for assistance should also be evaluated when the removal from the system of assistance becomes actual, for example when the criminal proceedings are terminated. The assessment of the victim's overall situation, related to the decision on removal, should not be carried out simply as an administrative process; instead, it should involve all the actors who have been working with the victim. The assessment should be prepared in co-operation with the municipal social welfare and healthcare specialist, reception centres, and organisations providing victims with assistance. To this end, the system of assistance must also possess adequate expertise to prepare an overall assessment of the victim's personal situation.

Based on the study, it is evident that the system of assistance, as such, is not able to reach the victims who do not dare to share their experiences of exploitation and violence with the criminal investigation authorities. Information concerning admittance to the system of assistance is always conveyed to the criminal investigation authorities. Based on the study, the tight link between the system of assistance and criminal proceedings seems to prevent victims of human trafficking from seeking authority assistance. Providing these victims with assistance appears to be dependent on the limited resources of NGOs. The system of assistance interprets the Reception Act in such a way that the victim is removed from the system of assistance, if no progress is made in the criminal case or no verdict is issued for human trafficking. Therefore, it seems that some victims are refused assistance even if they have been prepared to co-operate with authorities and share their experiences with the criminal investigation authorities, and are in need of assistance due to their experiences.

4.2.8 RECOMMENDATIONS ISSUED IN THE PROJECT

Based on the study, one of the most essential challenges is first and foremost related to the assistance provided for victims of human trafficking who are either Finnish or living permanently in municipalities. The level of action against human trafficking varies in municipalities. This work relies heavily on individual employees and their skills and abilities to intervene in and deal with human trafficking and the victims thereof. On the other

hand, the studied data indicates that the strong link between assistance and criminal proceedings and the end results thereof seem to be leading to a situation where some of the victims of human trafficking who are in need of assistance are excluded from authority assistance.

Based on the study it can be found that the 2015 amendments to the Reception Act have not, at least to a significant degree, solved the previously detected problems in the assistance of victims of human trafficking, which were primarily related to the equality of victims as beneficiaries of services and the referral of victims to authority assistance. The Reception Act concerning the assistance of victims of human trafficking and the application thereof may be incompatible with international and EU law.

In Finland, assisting victims of human trafficking is based on a model of shared organisational responsibility between two authority operators, namely Joutseno Reception Centre and municipalities. In the past years, the majority of victims referred to the system of assistance for victims of human trafficking have had an asylum-seeker background. Provisions on assistance are laid down in the Reception Act, and the body responsible for providing the victims with assistance has been placed in the reception centre for asylum seekers. This may partially explain why the system of assistance is easily approached by asylum seekers in particular. Of course, the situation is also affected by the fact that the number of asylum seekers has been considerable in the last few years.

In practice, victims of human trafficking with an asylum-seeker background are within the range of two partially overlapping support systems. Still it seems that they do not necessarily always receive the services they are entitled to due to their special status as victims of human trafficking. On one hand, asylum seekers' access to support is promoted by the fact that the assisting authorities, such as social workers in reception centres and the employees of Joutseno Reception Centre, apply the Reception Act regularly in their work and are already familiar with the Act. On the other hand, the provided services and their duration is determined by decisions taken in the asylum and residence proceedings.

Assisting victims of human trafficking in municipalities is made more complicated by the fact that the social welfare and healthcare authorities in charge are not familiar with the Reception Act, or the contents and obligations thereof. Consequently, they are not aware of the special status of victims of human trafficking, and the resulting rights of the victims as beneficiaries of services. Furthermore, they are not always fully aware of the possibility to seek municipal compensation for the special services provided for the victims of human trafficking, nor do they always have the time to claim said compensation. The Ministry of Social Affairs and Health has not instructed its administrative branch in the matter, which contributes to weakened awareness and application of the law. As a result, the special status of victims of human trafficking is not enforced. Victims of human trafficking do not always receive the services they would be entitled to under the law as victims of human trafficking. These customers also include Finnish citizens belonging to the main population.

The assistance of victims of human trafficking in municipalities must be strengthened by developing regulations and improving the instructions provided by authorities. The aim must be to ensure that the social workers, healthcare professionals and other essential municipal operators understand that they can encounter victims of human trafficking in their work. They must also know what to do in such situations, or where they can get more information to support their work.

Through legislation and the application thereof, the assistance for victims of human trafficking and the criminal proceedings have been tied together in a way that is problematic in the light of the international and EU law binding on Finland. The legal state is particularly problematic for the victims who are Finnish citizens or who have the right to reside in the country. The link between assistance and criminal proceedings seems to have become stronger with the legislative amendments that entered into force in 2015. A customer relationship with the system of assistance is usually terminated when the criminal proceedings on human trafficking come to an end. A change can also be seen in that it seems to be more difficult for victims of crimes related to human trafficking to receive help from the system of assistance. The study shows that some victims of human trafficking do not seek authority assistance due to the strong link between

assistance and criminal proceedings. For this reason, the system of assistance and the relevant legislation must be developed and made more victim-oriented. At the same time, attempts must be made to enhance the operating conditions of non-governmental organisations in the identification and assistance of victims of human trafficking.

Based on the study, the work against human trafficking is in need of a considerably more structured, strategic, comprehensive and target-oriented approach. To this end, the responsible ministries must support the practical work against human trafficking with adequate legislation, instructions, resources and supervision. Although the numbers of human trafficking come across as a societally marginal phenomenon, human trafficking is a fundamental infringement of human rights, and the victims are granted special rights. The study indicates a need for discussions on the position as beneficiaries of assistance of those victims of human trafficking who never recover from their exploitative experiences and for whom the social and healthcare services provided by municipalities are not enough to lead a life of human dignity. The study calls for a value debate considering the ethos of assistance for victims of human trafficking in Finland and the principles that guide the assistance work provided for victims of human trafficking.

BASED ON THE STUDY, THE FOLLOWING RECOMMENDATIONS WERE ISSUED IN THE TEAS REPORT:

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BASED ON THE STUDY, THE FOLLOWING RECOMMENDATIONS WERE ISSUED IN THE TEAS REPORT:

 - 1) A special act shall be drafted for the assistance for victims of human trafficking, and the link between assistance and criminal proceedings shall be loosened in the act and the system of assistance shall be made more victim-oriented.
 - 2) If no special act is enacted, the special status of victims of human trafficking must be secured in the general social welfare and healthcare legislation, by laying down provisions on the status of victims as beneficiaries of social and healthcare services in municipalities. These should include expense-free therapy services for the customers. The above-mentioned acts are, at the very least, complemented with an obligation to comply with the Reception Act in when organising services for the victims of human trafficking.
 - 3) The Ministry of Social Affairs and Health shall provide the bodies in charge of social welfare and healthcare services in municipalities and in the future counties with instructions for the application of legislation that applies to the victims of human trafficking.
 - 4) It is enacted that municipalities can claim compensation for the services provided for victims of human trafficking from Joutseno Reception Centre, instead of the ELY Centres.
 - 5) Joutseno Reception Centre shall place employees all over Finland to improve the geographic coverage of assistance for victims of human trafficking. The Ministry of the Interior/the Finnish Immigration Service shall secure adequate human resources for Joutseno Reception Centre to provide assistance for victims of human trafficking.
 - 6) When taking a decision on the removal of victims of human trafficking, Joutseno Reception Centre shall always conduct an overall assessment (section 38f) of the victim's personal situation to determine if the customer of the system of assistance is still in need of assistance measures. This overall assessment is conducted in co-operation with the actors assisting the victim, such as authorities and the third sector. If it is found on the basis of the overall assessment that the victim is still in need of support due to falling victim to human trafficking, the person is not removed from the system of assistance. To safeguard the implementation of this objective, legislative measures shall be taken if necessary.
 - 7) The provisions on reflection period shall be amended so that when Joutseno Reception Centre decides on the granting of a reflection period, the criminal investigation authorities are only provided with the data related to the victim's identity. If the person is not willing to initiate co-operation with the criminal investigation authorities at the end of the reflection period, no other related data accumulated at Joutseno Reception Centre shall be handed over to the

criminal investigation authorities. The personal details of victims who have been granted a recovery period are not disclosed to the criminal investigation authorities, if the victim is not willing to initiate co-operation with the criminal investigation authorities.

- 8) The exposal and investigation of human trafficking offenses is developed, for example, by establishing police investigation units specialised in human trafficking.
 - 9) The Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) shall be amended so that the occupational safety and health authorities must also report suspected human trafficking offenses to the police. In criminal cases pertaining to human trafficking, the occupational safety and health authority is also reserved the right to be heard during the criminal investigation, to issue a statement in the matter to the prosecutor, and to be present and heard in court.
 - 10) The State provides earmarked funding, for example, through the National Institute for Health and Welfare to promote the safe and supported housing of victims of human trafficking.
 - 11) The operating conditions of non-governmental organisations in identifying victims at the early stages and providing them with concrete assistance shall be supported with earmarked government funding (for example through STEA).

4.3. RIGHT OF A VICTIM OF HUMAN TRAFFICKING TO RESIDENCE PERMIT AND ASSESSING THE RISK OF RE-VICTIMISATION AS PART OF THE PROCEDURE FOR REMOVAL FROM THE COUNTRY

In 2006, the Aliens Act was complemented with particular grounds for issuing a residence permit for victims of human trafficking. The permit is issued as temporary due to reasons related to the investigation or court proceedings. The essential feature is that the victim of human trafficking can provide authorities with such information of the criminals, crimes and conditions of the crime that is relevant for crime prevention, and that the information can be used efficiently in criminal intelligence and criminal investigations (HE 32/2006 vp). Under section 52a(2), if the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis after an overall assessment. Under section 52 of the Aliens Act, a victim of human trafficking may also be granted a residence permit on compassionate grounds. In the initial stage, the matter is considered by the Finnish Immigration Service.

During the past years, the Ombudsman has worked with the Finnish Immigration Service to improve the Service personnel's expertise in identifying victims of human trafficking, referring victims to the system of assistance, and applying the residence permit requirements laid down in the Aliens Act. The Ombudsman has provided the Service personnel with training, as well as with guidance and advice in individual customer cases. Furthermore, the Ombudsman has asked the Service to clarify the justifications for its operation in cases where the Ombudsman has suspected that the rights of the victims have not been enforced. In some customer cases, the Ombudsman has, upon request, issued a statement to the courts of appeal.

Questions were raised, for example, by the Finnish Immigration Service's operation related to the identification of victims or evaluating a victim's age. Due to an age-related register entry made by another EU member state, there have been cases where child victims have not been treated as minors in the asylum process. Victims of forced marriage have not been referred to the system of assistance for victims of human trafficking, or a victim of work-related human trafficking has not been

identified as a victim of human trafficking, because the international legal definition of forced labour has been applied incorrectly. Furthermore, the Ombudsman has paid attention to the removal of the country of victims of human trafficking who have been refused an asylum or a residence permit. Authorities shall ensure that information concerning a removed person's background as a victim of human trafficking and the person's need for special services is appropriately conveyed to the authorities of the receiving country. The Ombudsman has also acknowledged that human trafficking victims who are responsible for under-aged children are at risk of becoming undocumented residents in Finland when the reception services are discontinued.

At the moment, the Finnish Immigration Service is one of the authorities referring the most victims to the system of assistance. There have been distinct improvements in the identification of victims of human trafficking at the Finnish Immigration Service. Furthermore, the number of residence permits issued for victims of human trafficking has increased since 2009. In the opinion of the Ombudsman, this is the result of determined and methodical long-term development work. The Ombudsman finds that the next stage should involve evaluating the timeliness of valid legislation and amending it if necessary.

In the autumn of 2016, the Ombudsman published a report on the practices in applying the Aliens Act, and the report was limited to victims of human trafficking with a Nigerian background. The Finnish Immigration Service's practices in applying the Aliens Act also raised questions concerning good governance. Based on the data consisting of residence permit decisions (2015 – July 2016), the Ombudsman concluded that the practice in applying the Aliens Act is partially unpredictable and inconsistent.

The requirement of “particularly vulnerable position” as grounds for issuing a continuous residence permit under the Aliens Act and the preliminary work thereof is demanding. Based on her study, the Ombudsman found that the Finnish Immigration Service is applying a narrow implementation of the requirement. The evaluation of the situation of victims of human trafficking was partially inadequate, or at the very least inconsistent. Research on human trafficking as a phenomenon, on the individual implications and effects caused by human

trafficking, and on the risks of re-victimisation was poorly utilised in decision-making.

The Ombudsman found that the Finnish Immigration Service did not seem to assess in its decisions the requirements that the international human rights conventions impose on Finland with regard to victims of human trafficking. As a particular human rights order, the Ombudsman referred to the obligation of the state to prevent the re-victimisation of a victim of human trafficking. Under this order, the state must also take active measures in a removal from the country to promote the human trafficking victims' integration into the society in the receiving country, for example by ensuring to a sufficient degree that the applicant and their children are referred to the assistance and support services required in the event of refused entry. In her study, the Ombudsman found that in its application of the Aliens Act, the Finnish State did not fully comply with their obligations to prevent the re-victimisation of a victim of human trafficking.

In the study, the Ombudsman issued several recommendations and development proposals for legislation and practices. One of the most essential recommendations was related to the Aliens Act, under which a victim of human trafficking must be in a particularly vulnerable position to receive a continuous residence permit. The Ombudsman found the requirement to be too demanding, considering how severe and individually detrimental criminal activity human trafficking, as such, already is. The requirement seems particularly demanding in comparison to the less drastic requirement of vulnerability related to the issuing of a residence permit on compassionate grounds (section 52 of the Aliens Act). The accrued research data and experience of human trafficking also support the legal amendments.

At its current form, the legislation seems to lead to a situation where victims of human trafficking are only issued with residence permits in highly exceptional situations. These exceptions primarily apply to sexually abused women, who have been severely harmed by the abuse and in whose case it is evaluated that if they are refused entry, they do not have the capacity to cope in the receiving country. The victims of, for example, work-related human trafficking are excluded from protection, if the exploitation cannot be investigated because the offense

has taken place abroad. In some situations, attempts are made to complement the lack of protection with compassionate grounds, but the emerging challenge is the unpredictability of the application practices.

The current Aliens Act and the related preparatory work raise the threshold for issuing a residence permit so high, that the requirements are almost identical to those applied to international protection. If a receiving state has, for example, illegalised human trafficking, it is not enough to protect a returned victim of human trafficking from re-victimisation in the receiving country. In this regard, the Act and the preparatory work thereof are not fully compatible with the 2012 human trafficking convention of the Council of Europe. Finland must endeavour with legislation and the related application practices to protect the victims of human trafficking from re-victimisation, also in the return situations.

The Ombudsman recommended the provisions of the Aliens Act on the residence permits of human trafficking victims to be amended so that a vulnerable position would suffice as grounds for issuing a continuous residence permit. Instead of legal interpretations guided by the current preparatory work, the main focus in assessing the requirements should be placed on issues that are relevant from the point of view of human trafficking and victimisation. Issues acknowledged in individual consideration could be related to, for example, the severity and duration of the abusive experiences related to human trafficking, and to the need for assistance caused by, for example, psychological symptoms. The consideration process could also take notice of other personal circumstances, such as the existence of debt and an applicant's responsibility for under-aged children, and the applicant's de facto ability and capacity to take care of themselves and their children in the event of refused entry without a risk of re-victimisation.

The grounds for issuing a victim of human trafficking a continuous residence permit would be amended so that, instead of the current “particularly vulnerable position”, the victim’s “vulnerable position” would constitute sufficient grounds for receiving a residence permit.

The Ombudsman has also taken notice separately of the Finnish Immigration Service's practices in the processing of so-called temporary crime-based residence

permits. The request for clarification was based on a suspicion that the Finnish Immigration Service had not handled the residence permit applications as expediently as required under the Administrative Procedure Act. The Service had waited so long to handle the residence permit applications of at least some customers referred to the system of assistance for victims of human trafficking and complainants in criminal proceedings that it had been able to acquire the prosecutor's decision on the grounds for bringing charges.

The Ombudsman found that the Finnish Immigration Service should not prolong the handling of a matter, nor wait for the criminal case to be transferred to a prosecutor or for the prosecutor's decision. Since a pre-trial criminal investigation may take years to complete, it is justifiable that the complainant's right of residence is resolved at the early stages of the criminal investigation. The Ombudsman has requested the Finnish Immigration Service to handle residence permit matters in compliance with the principles of good governance. These principles include, among others, an applicant's right to have their case processed without unjustified delay. The Ombudsman considers it important that the Finnish Immigration Service's practices in applying the Aliens Act are also steered with legislative amendments, if necessary.

RESULTS OF THE STUDY ON THE APPLICATION OF THE ALIENS ACT:

In the autumn of 2016, the Finnish Immigration Service decided to organise a fact-finding trip to Italy, with the purpose of discovering how a victim of human trafficking returned under the Dublin Regulation is referred to assistance services aimed at victims of human trafficking, and in what kind of situations are they left without assistance. Another central objective of the trip was to obtain information of who the Finnish authorities should contact before returning a person to Italy. In addition, the Finnish Immigration Service attempted to examine the situation of such victims of human trafficking returned to Italy who have a valid residence permit in Italy.

The Finnish Immigration Service published the fact-finding mission and its results in February 2017. Director General Vuorio announced that the information obtained during the trip will have an impact on the decision making of the Finnish Immigration Service. In the future, the Service will apply even more careful and individual

consideration to the returning of victims of human trafficking to Italy. The more detailed policies are available upon request from the Finnish Immigration Service. The Ombudsman will monitor the decision making of the Finnish Immigration Service actively. In practice, the policy has resulted in that the applications of, for example, many victims of human trafficking who have been identified in a so-called Dublin procedure, have been submitted for material handling in Finland.

4.4. COORDINATING ACTION AGAINST HUMAN TRAFFICKING

In March 2013, the Ministry of the Interior established a working group to draft a proposal for the intersectoral coordination of human trafficking in the Government. The working group proposed that a position of a human trafficking coordinator shall be established for the intersectoral monitoring and coordination of action against human trafficking, and a steering group shall be established to steer the action against human trafficking. Furthermore, a network for the coordination of action against human trafficking would be established to prepare the meetings of the steering group.

The duties of the human trafficking coordinator would include

- 1) monitoring and coordinating authority operations against human trafficking in accordance with the policies of the steering group, and promoting the cross-administrative enforcement of the victims' rights
 - 2) promoting the anti-human trafficking co-operation between authorities and third-sector operators
 - 3) collaborating with the authorities and NGOs of other states
 - 4) participating in the coordination of the Finnish government's opinions on issues related to human trafficking policies, and representing or arranging for representation in international organisations and other bodies and

- 5) organising data collection and reporting the enforcement of actions against human trafficking to the Government steering group and the ministerial working group for internal security.

Furthermore, the working group suggested that the co-ordinator would provide the steering group with a proposal on how the action against human trafficking should be coordinated. The coordinator should also draft a proposal for

- 6) a collaboration agreement between the authorities and non-governmental organisations
 - 7) a strategy for action against human trafficking, and
 - 8) regulations on the coordinator's task and needs for legislative amendments. The working group's proposal underlined that the purpose of the coordination structure is to introduce the data collected in practical work as a part of decision making, so that problems emerging at the operational level can be addressed. It was set as the objective that the coordinator shall monitor in real time both the decision making and the challenges and new phenomena arising from practical work.

The Ombudsman has actively attempted to support the operation of the coordination structure by introducing challenges detected in practical work against human trafficking and bringing these challenges for handling, and by providing proposals for the further development of the coordination structure. The coordination structure is a useful instrument which enhances the action against human trafficking. To resolve the challenges created by human trafficking, the views of the different administrative branches must be reconciled. The recent changes in the operational environment underline the importance of discussion and finding jointly agreed-upon solutions.

However, it is the opinion of the Ombudsman that the operation of the coordination structure should be improved. So far, the working group's idea of the coordination structure adopting the full responsibility for solving the challenges in the work against human trafficking has not been realised. The coordination structure has not,

to an adequate extent, been able to handle or resolve the practical challenges in action against human trafficking. Neither has the coordination structure been able to coordinate the action against human trafficking in the public administration, nor to increase collaboration and communication among authorities. Furthermore, no legislation has been prepared regarding the coordination, despite the specific resolution of the Parliament (EK 53/2014 vp). It is the view of the Ombudsman that, as such, the coordination structure does not appear to fulfil its initial purpose.

In the summer of 2017, the Ministry of the Interior circulated a memorandum on organising further coordination for action against human trafficking. Statements were submitted by the central bodies working with human trafficking and the victims of human trafficking, such as the Non-Discrimination Ombudsman, the Finnish Immigration Service, ministries represented in the coordination secretariat, the National Police Board, the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), and several non-governmental organisations. No summary has been prepared of the statements. All of the bodies providing statements considered coordination, as such, to be necessary and important, but the majority wished the coordination structure to adopt a distinctly more practical approach. Several statements pointed out that the coordination structure has not been able to achieve the objectives set for it, and suggested that the current effectiveness and performance of the coordination structure should be evaluated before deciding on further arrangements. The statement raised the question of where the coordinator would be placed. Some of the statement providers were in favour of establishing the structure through legislation or at least giving the matter a more thorough examination.

In her statement, the Ombudsman proposed that an external evaluation should be acquired on the performance of the coordination structure. In the view of the Ombudsman, the evaluation could provide valuable information of how the coordination of action against human trafficking has started in Finland and how it should be developed. The Ombudsman proposed that also the placement of the coordinator and potential legislative needs would be reconsidered at that point, at the latest. Ac-

cording to information received by the Ombudsman, the Ministry of the Interior is planning to commission a study on the organisation of coordination in the Government during the spring of 2018.

Provisions on the coordination of action against human trafficking should be laid down in accordance with the resolution of the Parliament. In the same context, the placement of the coordinator should be reconsidered. The Ombudsman is in favour of transferring the coordinator's (temporary) position to the Ministry of Justice.

4.5. CONCLUSIONS AND RECOMMENDATIONS

During the reporting period, the Non-Discrimination Ombudsman has carried out two studies on the realisation of the rights of victims of human trafficking. Firstly, the Non-Discrimination Ombudsman and the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), conducted an investigation funded by the Finnish Government's analysis and research appropriations (VN TEAS). The objective was to discover how the authorities apply the provisions for assisting victims of human trafficking laid down in the Reception Act and how the right of human trafficking victims to receive assistance in Finland is enforced. Based on the study, the challenges in assisting victims of human trafficking are primarily related to three essential issues: the assistance provided for the victims of human trafficking in municipal social welfare and healthcare services, the strong connection between assistance and criminal proceedings, and the limited operating conditions of NGOs in identifying and assisting victims of human trafficking.

According to the study, Joutseno Reception Centre provides good customer service and co-operates smoothly with other authorities. The municipalities also apply a high standard of professional ethics. However, the study showed that the authority assistance provided by the system of assistance does not reach all victims of human trafficking who are in need of assistance. The situation is particularly challenging in municipalities. The municipal social welfare and healthcare services are not familiar with the provisions of the Reception Act on assistance for victims of human trafficking, and the Ministry

of Social Affairs and Health has not provided the municipalities with instructions on applying the Act. As a result, the victims of human trafficking do not always receive the services to which they would be legally entitled. The victims also include Finnish citizens who belong to the main population.

The report also reveals that there are persons in Finland who, in spite of their need for assistance for reasons related to human trafficking, do not get sufficient help from the system of assistance for victims of human trafficking. They are either not referred to or not admitted to the sphere of authority assistance. Some victims are removed from the system of assistance on the grounds of a changed offence category, for example. Some victims of human trafficking do not even seek authority assistance. Almost no such sexual abuse victims are proposed for the system of assistance who would have fallen victim to human trafficking in Finland.

According to the study, one essential reason for the weak referral to assistance is the strong link between the provision of assistance for the victims of human trafficking and the criminal proceedings, which is a result of the legislation and the application thereof. Based on the study, this link seems to have been strengthened with the legislative amendment that entered into force in 2015. Through legislation and the application thereof, the assistance for victims of human trafficking and the criminal proceedings have been tied together in a way that is problematic in the light of the international and EU law binding on Finland. The legal state is particularly problematic for the victims who are Finnish citizens or who have the right to reside in the country.

The Non-Discrimination Ombudsman's study conducted in 2016 on the Finnish Immigration Service's practices in applying the Aliens Act raised questions concerning compliance with the principles of good governance. Based on the study, the Service's practices in applying the Aliens Act were partially unpredictable and inconsistent. The study also showed that the threshold for issuing a victim of human trafficking with a continuous residence permit is very high, and the requirements are almost identical to those applied to international protection. Furthermore, the Finnish Immigration does not pay in its decision making sufficient attention to the applicant's risk of re-victimisation after being removed from the country, even though this is an international obligation binding on

Finland. In her supervisory duties, the Ombudsman has also observed challenges in the processing of temporary crime-based residence permits.

The coordination structure for action against human trafficking, implemented in 2014 in the police service of the Ministry of the Interior, does not appear to be fulfilling its original purpose at the current stage. Although the inter-sectoral coordination of action against human trafficking would be important, so far the coordination structure has not, to an adequate extent, been able to handle or resolve the practical challenges in action against human trafficking, or to promote the co-operation and communication between authorities. According to information received by the Ombudsman, the Ministry of the Interior is planning to commission an external investigation on the coordination structure during the spring of 2018.

There have been distinct developments in action against human trafficking in Finland in the recent years. The identification of human trafficking has been improved, the case law has been developed, and the system of assistance for victims of human trafficking has become an important partner for many authorities and NGOs. The improved identification of human trafficking and the development of action against human trafficking are witnessed in the Ombudsman's office as an increase in contacts from customers and authorities. As the workload increases, the current resources are no longer sufficient to meet the information and support-related needs of the actors working to fight human trafficking, especially since the Ombudsman also aspires to secure the superior quality of the reporting and research activities. The Ombudsman's operating conditions as the National Rapporteur on Trafficking in Human Beings must be enhanced.

Under the Act on the Non-Discrimination Ombudsman, the Ombudsman is an autonomous and independent authority with a broad mandate and right of access to information. The broad right of access to information secures for its part the Ombudsman's ability to act efficiently, reliably and effectively. Despite the broad right of access to information, the Ombudsman right to information has in some situations been disputed, and the Ombudsman has not always received from other authorities information that has been necessary for the Ombudsman to perform her duties. The Ombudsman's right of access to information must be safeguarded also in the future.

The Non-Discrimination Ombudsman proposes the following to the Parliament

RECOMMENDATION 7:

DRAFTING A SPECIAL ACT ON ASSISTANCE FOR VICTIMS OF HUMAN TRAFFICKING

The special status of victims of human trafficking as beneficiaries of services would be improved for example by drafting a special act under the leadership of the Ministry of Social Affairs and Health or by including the special status of victims of human trafficking and the right to assistance measures in the general legislation on social and health care services and by issuing sufficient instructions for the social and health care sector.

The link between assistance for victims of human trafficking and criminal proceedings would be loosened so that the legislation and the application thereof would be compatible with the international law and the EU legislation binding on Finland.

The assistance would be made more victim-oriented, so that the victims of human trafficking who are in a particularly vulnerable position would be compatible with the international law and the EU legislation binding on Finland.

RECOMMENDATION 9:

PREPARING A LEGISLATIVE AMENDMENT TO EXTEND THE COMPETENCE OF THE OCCUPATIONAL SAFETY AND HEALTH AUTHORITIES TO HUMAN TRAFFICKING OFFENCES

The Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) would be amended so that the occupational safety and health authorities must report suspected human trafficking offenses to the police.

RECOMMENDATION 8:

PREPARING AMENDMENTS TO THE ALIENS ACT CONCERNING THE RESIDENCE PERMITS OF VICTIMS OF HUMAN TRAFFICKING

The grounds for issuing a victim of human trafficking a continuous residence permit would be amended so that, instead of the current “particularly vulnerable position”, the victim’s “vulnerable position” would constitute sufficient grounds for receiving a residence permit.

Potential need for amendments also to the provisions on the temporary residence permit of a victim of human trafficking would be evaluated.

5. Afterword and recommendations

The Non-Discrimination Ombudsman has an extensive mandate and competence to intervene in discrimination, to act as the National Rapporteur on Trafficking in Human Beings, and to act as the supervisor of the enforcement of removal from the country. Through this mandate, the Non-Discrimination Ombudsman has acquired a good overall understanding of the status of fundamental and human rights in Finland, considering also the position of the different minorities.

The significance of equality and of the fundamental and human rights is emphasised in societally demanding situations. The atmosphere around human rights has been challenging in Finland in the recent years. Progress has been made, for example, in the form of introducing marriage equality in legislation and ratifying the UN Convention on the Rights of Persons with Disabilities. In contrast, the rights of the Sámi as an indigenous people have been neglected, and the legal status of asylum seekers has been weakened.

Anyone can be discriminated against. According to studies, persons with a minority background experience discrimination more often than others. During the past three years, the Non-Discrimination Ombudsman has received considerably more contacts concerning discrimination based on origin or disability than on any other grounds for discrimination. Based on the complaints and research data, discrimination in different areas of life is both common and highly diverse. Discrimination may be related to online banking services, healthcare, school transport, renting an apartment, or harassment in the employment. However, a part of the discrimination remains uncovered and it cannot be intervened in efficiently.

Considering the effectiveness of the Non-Discrimination Ombudsman's operation, it is reasonable to invest in preventive action. Preventive measures and improving legal awareness are essential features in the promotion of equality. The Non-Discrimination Act provides individuals with strong protection against discrimination. The Act provides the Non-Discrimination Ombudsman with various instruments for intervening in discrimination and promoting equality in the different areas of life. The Ombudsman exercises its competence extensively. The Ombudsman can intervene in discrimination experienced by individuals at a low threshold and promote equality in a lighter way in comparison to a legal process. The resources allocated

to the Non-Discrimination Ombudsman's work can be regained many times over, when we can avoid these often serious infringements and their costs to both the public and private sector.

By developing the Non-Discrimination Act further, it would be possible to intervene in discrimination and promote equality even more efficiently. The Constitutional Law Committee and the Employment and Equality Committee (PeVL 31/2014 vp, TyVM 11/2014 vp) have deemed it necessary to investigate, among other issues, the possibility of extending the Ombudsman's competence to individual employment cases and the possibility for the ordering of compensation at the National Non-Discrimination and Equality Tribunal. Based on the experiences accrued during the Non-Discrimination Ombudsman's first three years of duty, it is justified to continue developing the Act to improve the legal protection of individuals so that the Ombudsman could also assess discrimination occurring in employment. Similarly, the Ombudsman should have the possibility of bringing a discrimination matter to the National Non-Discrimination and Equality Tribunal without an identifiable victim, and the National Non-Discrimination and Equality Tribunal should have the authority to order compensation to be paid to a victim of discrimination.

During the past three years, the rights of asylum seekers in particular have been narrowed down in a way that has raised a question on the status of the Finnish rule of law. With regard to the position of asylum seekers, legal amendments have been implemented and application practices have been made stricter. The combined effects of said developments should be assessed critically. Respecting the fundamental and human rights must be a key value when taking decisions on the status of persons in a vulnerable position. The asylum and immigration policies should be aimed at finding sustainable solutions, from the point of view of the individual as well as the society.

According to the pilot study conducted by the Faculty of Law of the University of Turku, the Institute for Human Rights at Åbo Akademi University and the Non-Discrimination Ombudsman, the asylum seekers' grounds for international protection were not accepted as often in 2017 than in 2015. It seems that, given the application practices of the Finnish Immigration Service, the applicant's burden of proof has been set high. However, it should be the established principle in a constitutional state that

essential amendments pertaining to the legal position of individuals are always implemented through legislation. Therefore, the level of international protection in Finland and the changes thereof should be subjected to a more extensive study, which would cover the different application and appeal stages.

As a result of the income requirement and the increased application fees, family reunification has been made practically unattainable to many beneficiaries of international protection, and in particular to beneficiaries of subsidiary protection and minor recipients of a residence permit. The number of persons residing in municipalities without a residence permit has increased in the last few years. The differing practices of municipalities on the contents of indispensable subsistence and care have created a problematic situation from the perspective of equality. For the realisation of fundamental and human rights, it is a severe shortcoming that persons staying in the country without a residence permit do not dare to apply for a residence permit or to report crimes against them in the fear of enforced deportation.

Doubts concerning the inadequacy of the legal protection and the combined effects of the changes on the asylum decision process have an impact on whether or not the enforcement of negative decisions is deemed justified. The requirement of speedy enforcement of negative decisions is questionable, unless it can be confirmed that the practice is correct and the applicant's case has been thoroughly investigated. At the moment, the security situation of Afghanistan is unstable, and the existing conditions there endanger the safety of returned individuals. For this reason it would be justified to refrain from implementing repatriations, and the Finnish Immigration Service should grant temporary residence permits to asylum seekers.

Based on the number of negative decisions on international protection that was known at the end of 2017, removals from the country will continue to increase in the immediate future. They will become increasingly difficult especially due to resistance from the returnees and external actors. The presence of an independent monitor in involuntary returns increases the transparency of authority operations, improves the legal protection of the returnees, dispels suspicions related to authority operations, and prevents the spreading of false information. The Finance Committee emphasised in its report (VaVM 22/2017 vp) on

the 2018 Budget that it must be ensured in the public finances plan drafted in the spring of 2018 that the statutory task of the Non-Discrimination Ombudsman to monitor the enforcement of removal from the country is allocated sufficient and permanent appropriations.

According to the study conducted jointly by the Non-Discrimination Ombudsman and the European Institute for Crime Prevention and Control on the effectiveness of legislation that applies to assistance for victims of human trafficking, the authority assistance offered by the system of assistance does not reach all victims of human trafficking who are in need of assistance. The situation is particularly challenging in municipalities. The municipal health and social services are not familiar with the Reception Act applicable to the assistance for victims of human trafficking, and the special status of human trafficking victims as beneficiaries of municipal services is not realised. Victims of human trafficking do not always receive the services to which they would be legally entitled. The victims also include Finnish citizens who belong to the main population.

Furthermore, the study shows that there are persons in Finland who, in spite of their need for assistance for reasons related to human trafficking, do not receive sufficient help from the system of assistance for victims of human trafficking. They are either not referred to or not admitted to the sphere of authority assistance. Some of the victims are removed from the system of assistance on the grounds of, for example, a change in the offence category or charges. NGOs have insufficient operating conditions to assist victims of human trafficking who are not admitted to authority assistance. Some victims of human trafficking do not even seek assistance from the authorities. For example, almost no such sexual abuse victims are proposed for the system of assistance who would have fallen victim to human trafficking in Finland.

According to the study, a central reason for this is the strong link between the provision of assistance for the victims of human trafficking and criminal proceedings that results from legislation and application thereof. This link seems to have become stronger as a result of the legislative amendment that entered into force in 2015. According to the study, the operators of the criminal justice system themselves proposed that the system of assistance should be able to help victims regardless of the progression of the criminal case.

The above text complies the most central messages of the first report to the Parliament by the Non-Discrimination Ombudsman. Based on them, the Non-Discrimination Ombudsman proposes the following to the Parliament:

RECOMMENDATION 1:

INITIATING A PARTIAL REFORM OF THE NON-DISCRIMINATION ACT

To strengthen the legal protection of victims of discrimination, the Non-Discrimination Ombudsman should, in addition to the occupational safety and health authorities, be authorised to assess also discrimination occurring in employment.

The Non-Discrimination Ombudsman should be re-invested with the possibility of bringing a case concerning discrimination to the National Non-Discrimination and Equality Tribunal also without an identifiable victim.

The National Non-Discrimination and Equality Tribunal should be given the right to order compensation to be paid to victims of discrimination.

The (in)action of an educational institution should constitute discrimination, if the institution does not intervene in discrimination against a pupil or student.

A unit-specific obligation should be laid down for early childhood education and care units to promote equality and prepare an equality plan, in the same way as for educational institutions.

A job applicant should in all situations have the possibility of receiving a report from the employer concerning the grounds on which the recruitment selection has been made.

RECOMMENDATION 2:

PREPARATION OF AMENDMENTS TO THE ALIENS ACT

Provisions should be laid down on distributing the burden of proof between the asylum seeker and authority, and legislative amendments should be aimed particularly at safeguarding the application of Article 4(4) of the Qualification Directive (2011/95/EU) so that a previous infringement experienced by an asylum seeker is considered as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

The right to family life should be equally provided for persons with refugee status and subsidiary protection status without requiring them stable and regular resources in their family reunification applications as the requirement could lead in practice to discrimination on economic grounds. Particular attention should be paid to the child's right to family life and to parental care. At least the more favourable treatment applied to refugees should be extended also to the beneficiaries of subsidiary protection as there is no justification for their differential treatment.

RECOMMENDATION 3:

PREPARATION OF AMENDMENTS TO THE RECEPTION ACT

The impacts of the Reception Act on the increase in the number of persons residing in the country without a residence permit should be examined, and the necessary legislative amendments should be implemented to ensure that the reception services would not be terminated before the decision to remove a person refused an asylum from the country can be enforced.

RECOMMENDATION 4:

ASSESSING THE IMPLEMENTATION OF A FIREWALL FOR IRREGULAR MIGRANTS

Persons staying in the country without a residence permit should be guaranteed a possibility to deal with authorities without having to fear the enforcement of removal from the country as a result of the service situation.

RECOMMENDATION 5:

LAYING DOWN PROVISIONS ON INDISPENSABLE CARE AND SUBSISTENCE

Provisions on the indispensable care and subsistence referred to in section 19 of the Constitution, to which all individuals – including irregular migrants – have the right, should be laid down in legislation.

RECOMMENDATION 6:

ALLOCATING PERMANENT RESOURCES TO THE NON-DISCRIMINATION OMBUDSMAN'S TASK OF MONITORING THE ENFORCEMENT OF REMOVAL FROM THE COUNTRY

Permanent resources should be reserved in the plan for public finances for the statutory task of the Ombudsman.

RECOMMENDATION 7:

DRAFTING A SPECIAL ACT ON ASSISTANCE FOR VICTIMS OF HUMAN TRAFFICKING

The special status of victims of human trafficking as beneficiaries of services would be improved for example by drafting a special act in the leadership of the Ministry for Social Affairs and Health or by including the special status of victims of human trafficking and the right to assistance measures in the general legislation on social and health care services and by issuing adequate instructions for the social and health care sector.

The link between assistance for victims of human trafficking and criminal proceedings would be loosened so that the legislation and the application thereof would be more compatible with the international and EU law binding on Finland.

The assistance would be made more victim-oriented, so that the victims of human trafficking who are in a particularly vulnerable position would be more often referred to the system of assistance for victims of human trafficking.

RECOMMENDATION 8:

PREPARING AMENDMENTS TO THE ALIENS ACT CONCERNING THE RESIDENCE PERMITS OF VICTIMS OF HUMAN TRAFFICKING

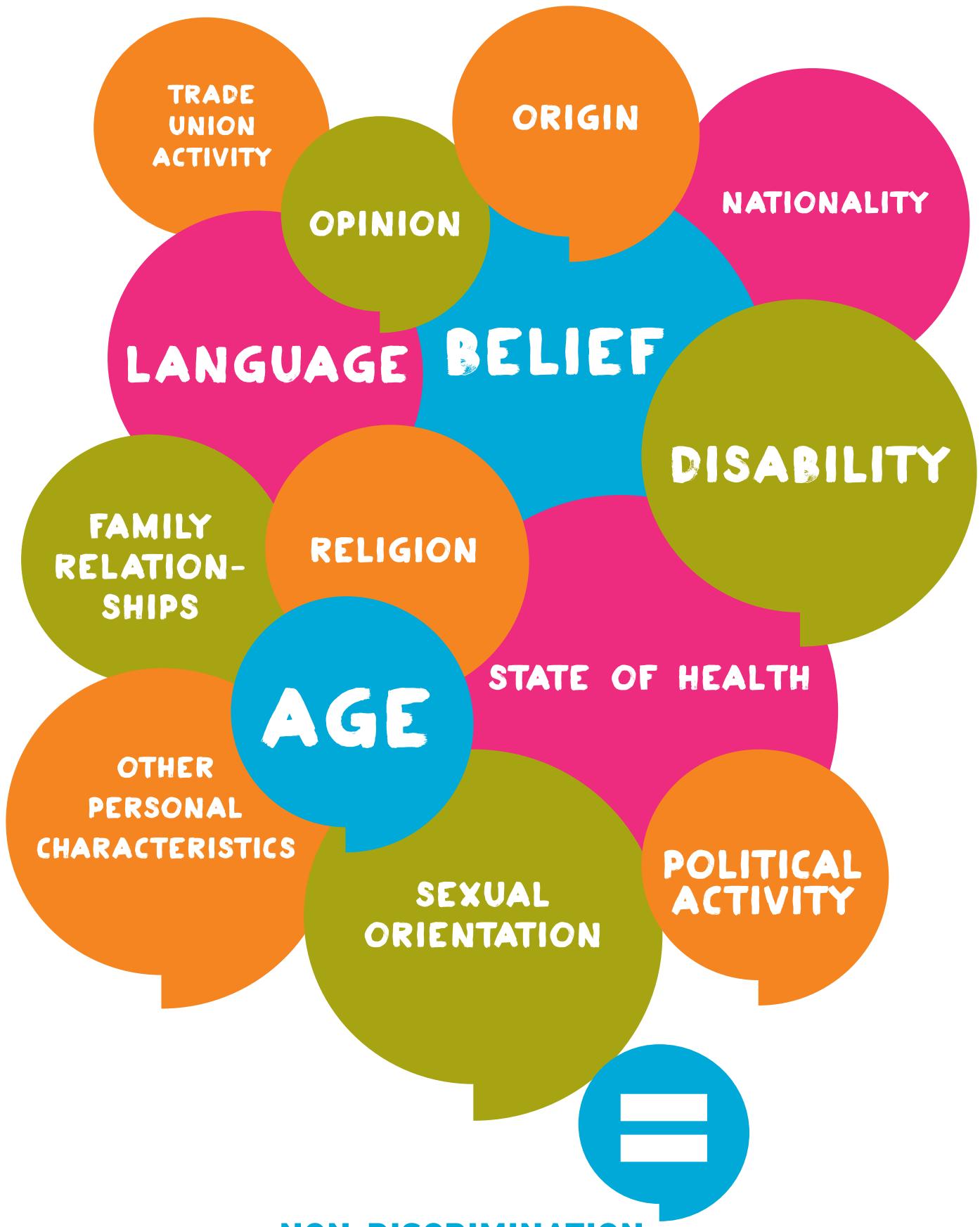
The grounds for issuing a victim of human trafficking a continuous residence permit would be amended so that, instead of the current “particularly vulnerable position”, the victim’s “vulnerable position” would constitute sufficient grounds for receiving a residence permit.

Potential need for amendments also to the provisions on the temporary residence permit of a victim of human trafficking would be evaluated.

RECOMMENDATION 9:

PREPARING A LEGISLATIVE AMENDMENT TO EXTEND THE COMPETENCE OF THE OCCUPATIONAL SAFETY AND HEALTH AUTHORITIES TO HUMAN TRAFFICKING OFFENCES

The Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) would be amended so that the occupational safety and health authorities must report suspected human trafficking offenses to the police.



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