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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.



Kirsi Pimiä
Non-Discrimination Ombudsman

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.

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

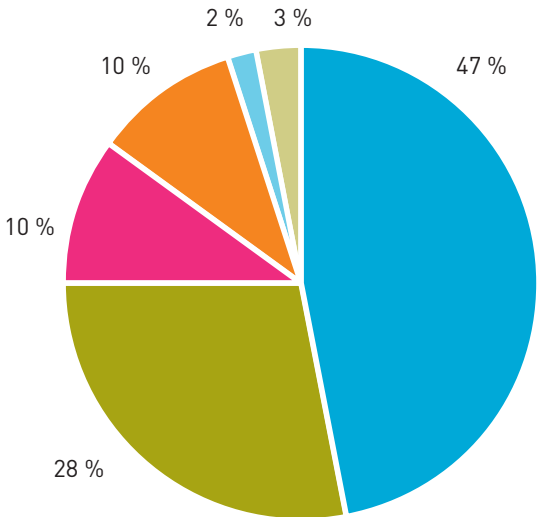
Different Parliamentary Committees have also expressed in their Budget statements their concern regarding the inadequate resources available for the task of the National Rapporteur on Trafficking in Human Beings and for the supervision of the enforcement of removal from the country. The Ombudsman’s office 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

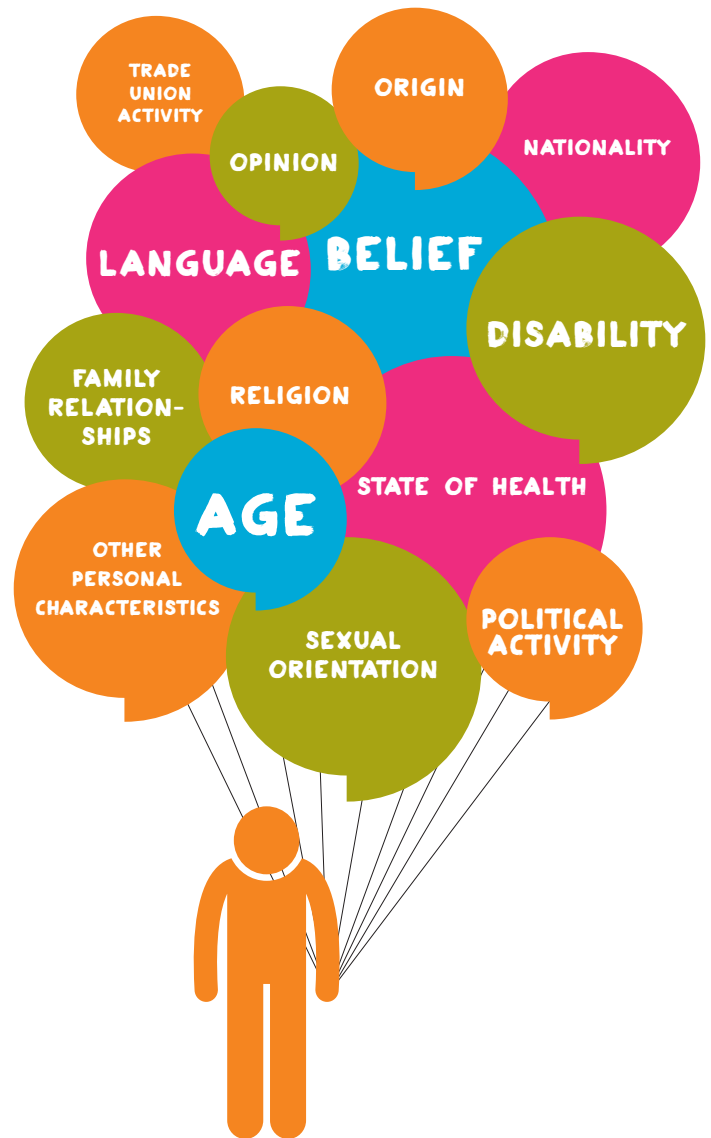
The Non-Discrimination Ombudsman is an autonomous and independent authority, whose key task consists of promoting equality and tackling discrimination. The Ombudsman receives contacts regarding experienced or observed discrimination with a wide variety of grounds for discrimination and from all areas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

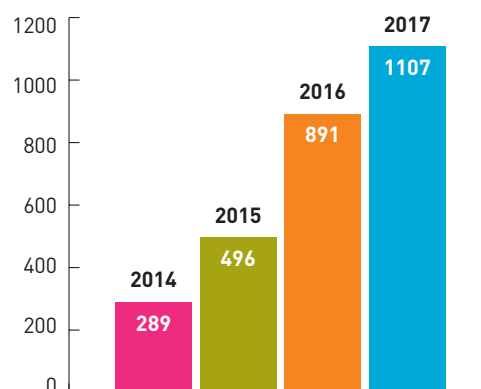
This chapter examines the Non-Discrimination Ombudsman's operating methods applied to tackling discrimination and promoting equality. The chapter also presents other legal remedies provided for in the non-discrimination legislation, such as the National Non-Discrimination and Equality Tribunal. In addition, 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.

GROUNDS 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

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.

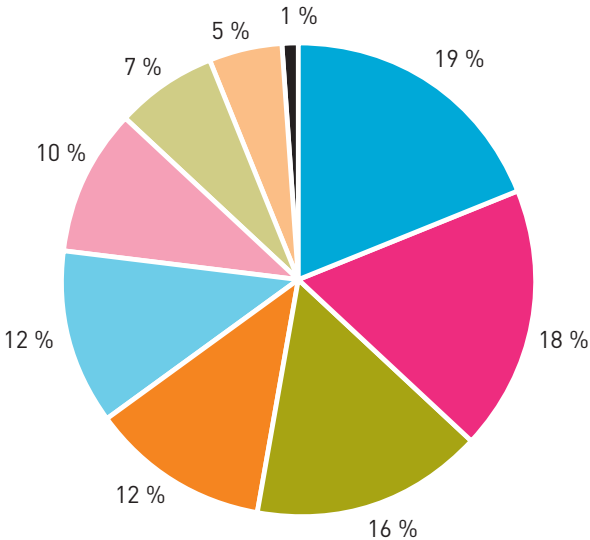
The promotion of equality prevents discrimination and increases people's awareness of the prohibition of discrimination. Equality plans, which under the current legislation must be more comprehensive and are required of more operators than previously, were set to be completed in the beginning of year 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 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 executive 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 executive act. This was the first time a national court has found an executive act unconstitutional. The prosecutor is likely to appeal the decision to the Supreme Court.

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 ([Ikäihmistien moninaisuus näkyväksi](#)): Selvitys vähemmistöihin kuuluvien ikääntyneiden henkilöiden kokemasta syrjinnästä sosiaali- ja terveystalveluissa.) 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.

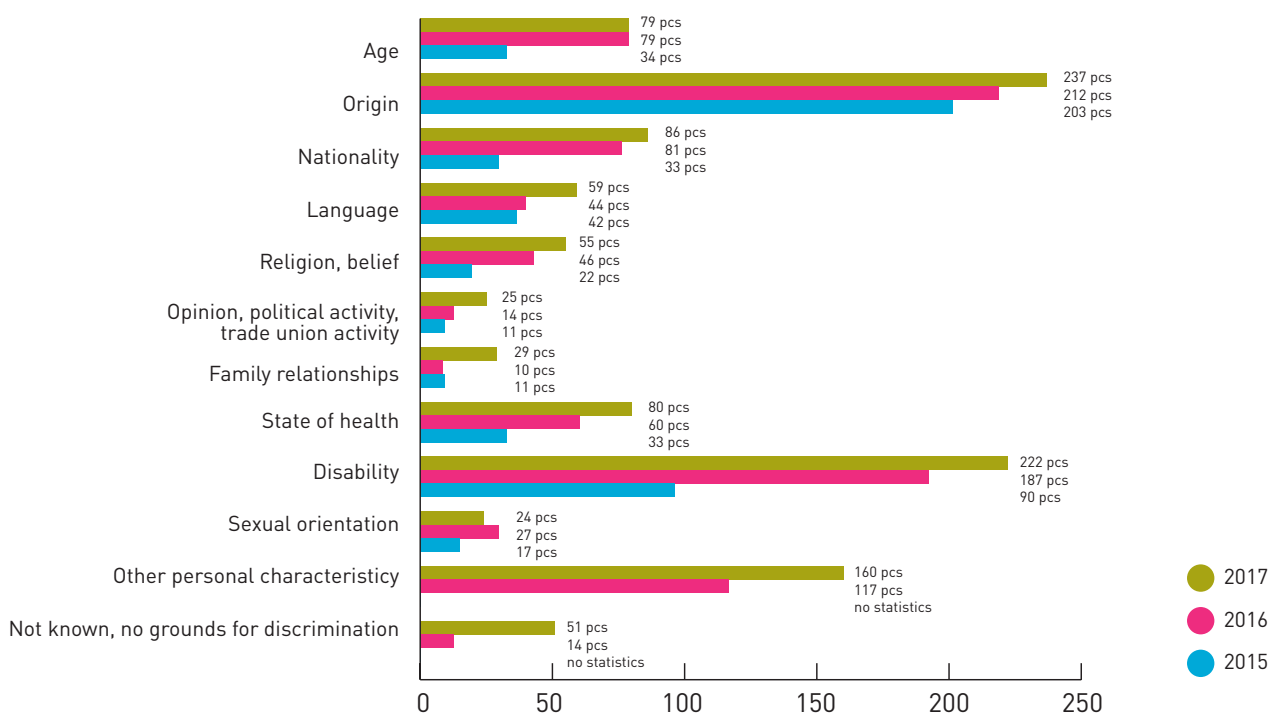
The importance of increasing awareness of multiple discrimination has been highlighted in a recently published report on the human rights of minorities within minorities and multiple discrimination ([Vähemmistöjen sisäisten vähemmistöjen ihmisoikeudet ja moniperusteinen syrjintä](#) [Juridica Lapponica 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

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 (VVTD-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.

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

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



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.

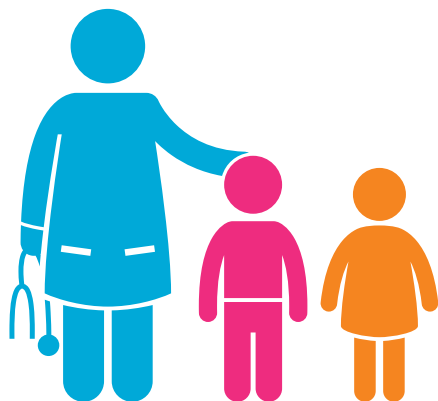
Restaurant services have been linked to situations where a person with foreign background has been denied access to a restaurant, even though they have presented valid identity documentation. The catering business has also engaged in public dialogue concerning personal identification documents required 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

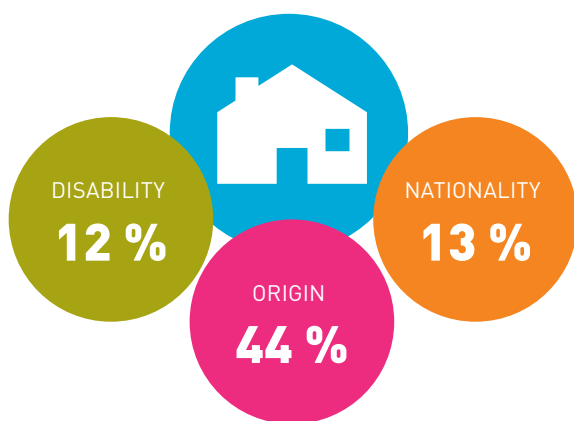


Social welfare and healthcare services are essential for the wellbeing and everyday life of individuals. Often these services are quite intimate by nature: as customers in health and social services, individuals must process their most personal matters or let an unknown person touch their body, for example. 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

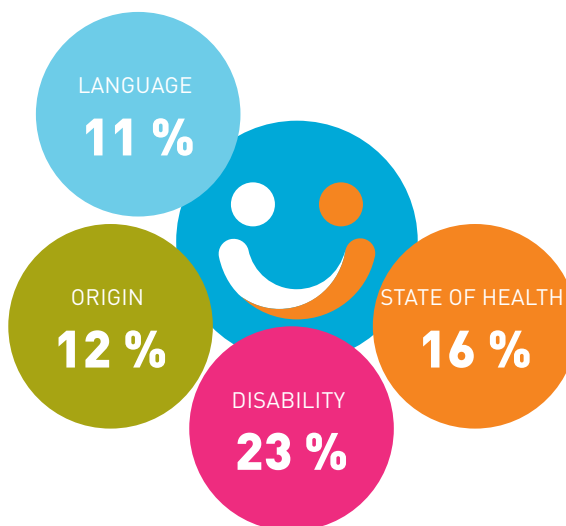
services and safeguarding the provision of services in the Swedish and Sámi languages are essential obligations, which will not be fully enforced unless they are underscored in the reforms.

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



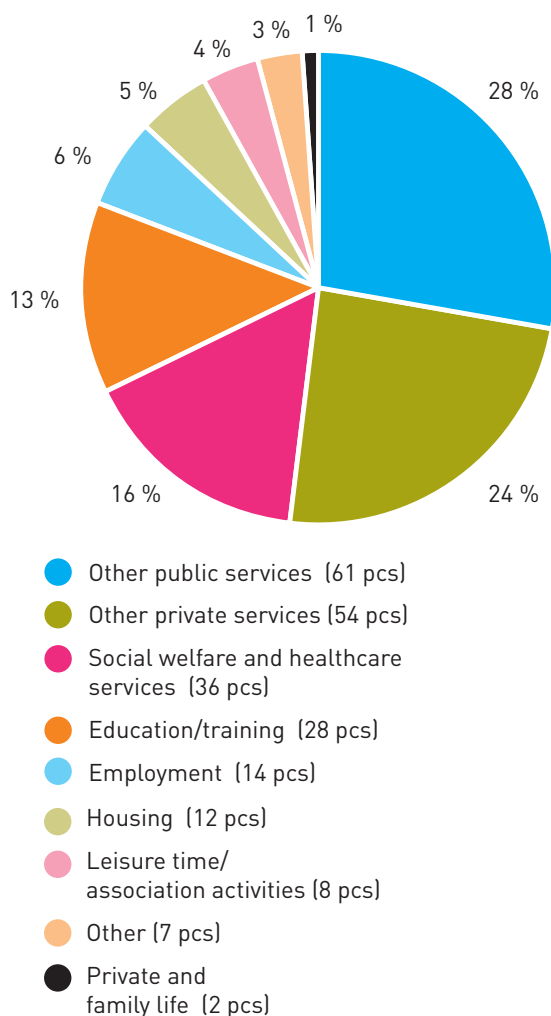
THE MOST COMMON GROUNDS FOR DISCRIMINATION IN SOCIAL WELFARE AND HEALTHCARE SERVICES 2017



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)



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.

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 Ombudsmen'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.

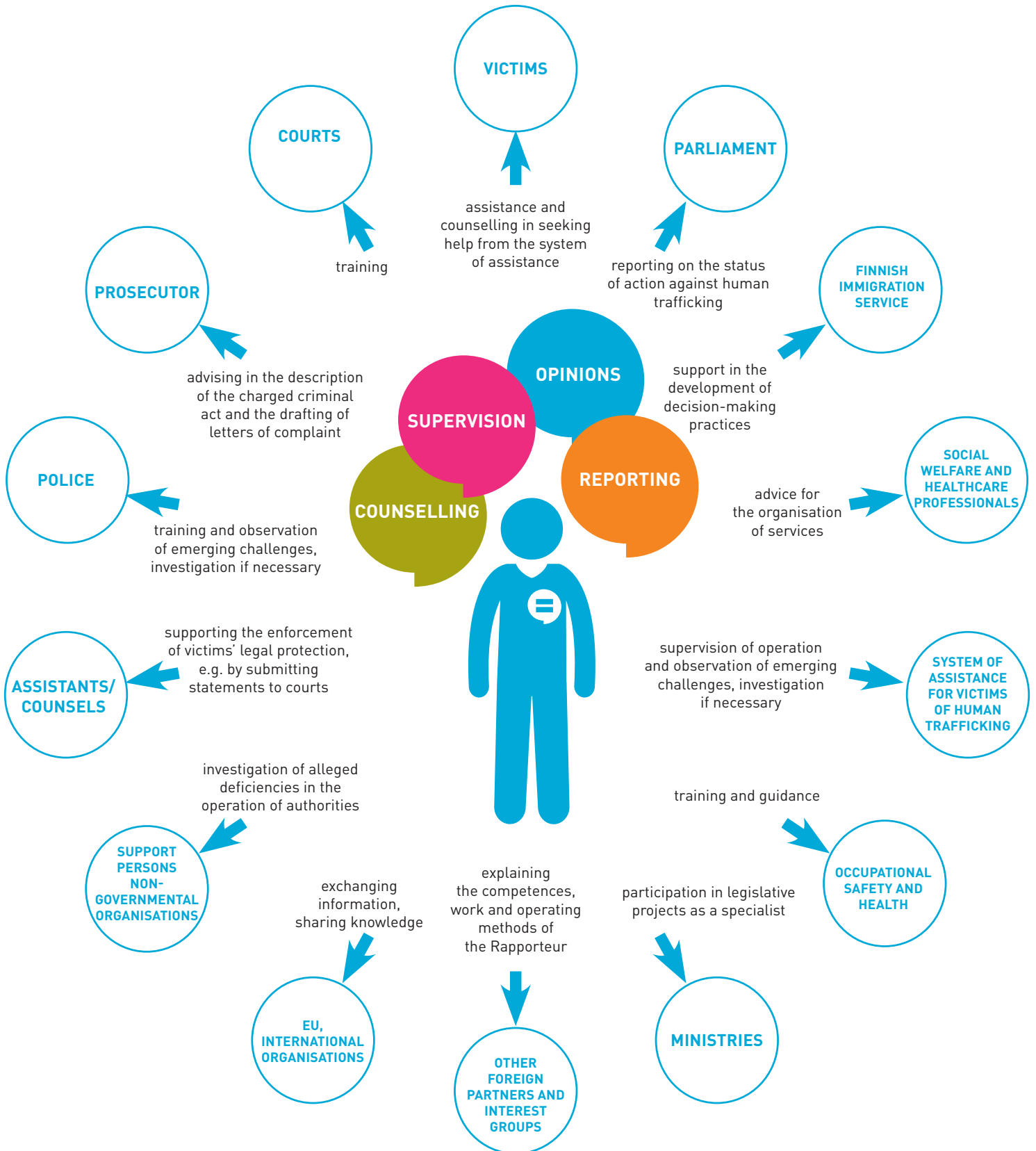
2.6. OTHER DEVELOPMENT NEEDS CONCERNING THE NON-DISCRIMINATION ACT

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


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.





DEVELOPMENTS IN THE ACTION AGAINST HUMAN TRAFFICKING IN FINLAND


<ul style="list-style-type: none"> EU Framework Decision on combating human trafficking (2002/629/JHA) 	2002					
<ul style="list-style-type: none"> EU Directive concerning the position of victims of human trafficking (2004/81/EC) Human trafficking is made punishable by law 	2004					
<ul style="list-style-type: none"> The first action plan against human trafficking is adopted 	2005		2			
<ul style="list-style-type: none"> 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	
<ul style="list-style-type: none"> System of assistance for victims of human trafficking begins its operation Court of Appeal issues its first sentence for human trafficking 	2007		3		0	
<ul style="list-style-type: none"> Government action plan against human trafficking is issued 	2008		6		5	
<ul style="list-style-type: none"> 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	
<ul style="list-style-type: none"> Ombudsman submits her first report to the Parliament Ombudsman initiates closer co-operation with the police 	2010	23	13	2	0	
<ul style="list-style-type: none"> 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	
<ul style="list-style-type: none"> 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
<ul style="list-style-type: none"> 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
<ul style="list-style-type: none"> 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
<ul style="list-style-type: none"> 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
<ul style="list-style-type: none"> Ombudsman publishes the study on practices in applying the Aliens Act on victims of human trafficking 	2016	167	72	8	6	17
<ul style="list-style-type: none"> 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

 pcs/year = Customer volume of the system of assistance for victims of human trafficking

 pcs/year = Charged brought under the category of human trafficking

 pcs/year = Asylums and residence permits granted for victims of human trafficking

 pcs/year = Investigated offences under the category of human trafficking

 pcs/year = Sentences under the category of human trafficking

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



NON-DISCRIMINATION

OMBUDSMAN

YHDENVERTAISUUSVALTUUTETTU
DISKRIMINERINGSOMBUDSMANNEN
OVTTAVEARDÁSAŠVUODÁÁITTARDEADDJI