



**THE NON-DISCRIMINATION
OMBUDSMAN'S**

ANNUAL REPORT
2019



CONTENTS

The Non-Discrimination Ombudsman	5
Foreword	6
Tackling discrimination and promoting equality	8
Customs invests in non-discrimination competencies in its surveillance practices	8
Different treatment based on ethnicity is rarely acceptable.....	9
Security authorities must promote equality	10
The Finns Party Youth’s Twitter post violated the human dignity of black people and constituted harassment prohibited by the Non-Discrimination Act.....	11
The legal protection of Roma has improved	12
Rights of the Sámi.....	15
Discrimination is a major obstacle to employment and promotion in Finland	17
Discrimination at the workplace begins already in work practice program	18
Start-up grant denied on grounds of state of health	19
Reasonable accommodations	20
Challenges remain in school transportation for children with disabilities	21
Discrimination against sexual minorities	23
The Non-Discrimination Ombudsman promoted reconciliation in a discrimination case on the Åland Islands	23
Equality in infertility treatments has improved.....	23
Blood donation prohibition for men who have sex with men.....	24
Costs of disabled sports	26
Non-Discrimination Ombudsman’s recommendation for public swimming pools: Public swimming pools must support diversity	27
The right of women to dress as they want is also a question of equality	28
Library age limits: group sanctions are not acceptable.....	30
Customer service and statistics.....	32
Promoting the rights of vulnerable foreign nationals	38
Finland judged by the ECHR – Ombudsman’s report raised concerns already the previous year.....	38
Legalisation of residence requires amendments to legislation	40

Work of the National Rapporteur on Trafficking in Human Beings	42
10th anniversary of the national rapporteur on trafficking in human beings: much progress has been achieved.....	42
Parliamentary Ombudsman’s decision guides municipalities in providing assistance to victims of human trafficking	44
Growth of labour exploitation increases risk of human trafficking	46
Victims of forced labour and labour exploitation need protection.....	48
Monitoring the enforcement of removals from the country	49
Communications to the Parliamentary Ombudsman	49
The rights of the child must be respected also in detention	50
Best interests of the child.....	52
AMIF Project – Effectiveness of monitoring removals from the country.....	53
European cooperation in the monitoring of enforced removals consolidates fundamental rights.....	53
Staff of the Office of the Non-Discrimination Ombudsman	57



The Non-Discrimination Ombudsman

The Non-Discrimination Ombudsman promotes equality and handles cases of discrimination. The Ombudsman is an autonomous and independent authority.

You can contact the Non-Discrimination Ombudsman if you have experienced or witnessed discrimination based on age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relations, state of health, disability, sexual orientation, or another personal characteristic. The Ombudsman also works towards improving the rights and status of groups at risk of discrimination. Additionally, the Ombudsman monitors the removal of foreign nationals from the country and is the National Rapporteur on Trafficking in Human Beings.

In practice, the work of the Non-Discrimination Ombudsman includes guidance, investigation of individual cases, negotiating reconciliation, training, gathering information, influencing legislation and the practices of authorities, and legal counselling. The duties and rights of the Ombudsman are stated in the Non-Discrimination Act (1325/2014) and the Act on the Non-Discrimination Ombudsman (1326/2014). The Non-Discrimination Ombudsman is under the jurisdiction of the Ministry of Justice.

Discrimination based on gender, gender identity or gender expression is the purview of the Ombudsman for Equality <https://www.tasa-arvo.fi/>

CONTACT INFORMATION

EMAIL:

Customer service and registry:
yvv@oikeus.fi

Staff email:

firstname.lastname@oikeus.fi

Media:

viestinta.yvv@oikeus.fi

POSTAL ADDRESS:

Yhdenvertaisuusvaltuutetun toimisto
PL 24 00023 Valtioneuvosto

PHONE NUMBERS:

Customer service:

+358 295 666 817 *(Telephone helpline open on Tuesdays, Wednesdays and Thursdays 10–12)*

Exchange: **+358 295 666 800**

Media contact: **+358 295 666 813**

Fax: **+358 295 666 829**

Internet: www.syrjinta.fi

Twitter: @yhdenvertaisuus

Facebook: www.facebook.com/yhdenvertaisuus

Instagram: @yhdenvertaisuusvaltuutettu

LinkedIn: yhdenvertaisuusvaltuutettu



Foreword for the Annual Report 2019

In April 2019, Parliament passed nearly all amendments to legislation proposed by the Non-Discrimination Ombudsman either partly or in full. The recommendations in the report given by the Ombudsman to Parliament in 2018 concerned matters such as the partial amendment of the Non-Discrimination Act, improving the position of victims of human trafficking, and safeguarding the rights of asylum seekers and those who have been granted a residence permit. Recommendations for the development of legislation are part of the Non-Discrimination Ombudsman's statutory duty to promote equality in society.

The majority of the Non-Discrimination Ombudsman's resources are used on the supervision of the Non-Discrimination Act's provisions on non-discrimination and the promotion of equality. The Ombudsman's interventions are largely based on complaints and communications received on discrimination (a total of 920 in 2019). The Ombudsman seeks to bring justice to the victims of discrimination by investigating and intervening in these cases of discrimination. However, it is equally important to ensure that no one suffers similar discrimination in the future either. For this reason, the Ombudsman communicates extensively on the damage caused by discrimination and its consequences, such as the compensations paid to victims of discrimination after a reconciliation procedure overseen by the Ombudsman. This annual report's descriptions of discriminatory situations and their resolution illustrate the discrimination faced by various minorities. On a positive note, this year the Non-Discrimination Ombudsman is able to report more than previous years on how various parties have changed their practices, for example developing their non-discrimination planning to ensure that discrimination will not occur any more.

The first five years since the entry into force of the amended Non-Discrimination Act (2015) have shown that the revised Act has improved the realisation of



the rights of the people with disabilities, in particular by highlighting the obligation to make reasonable accommodations and reminding that the urban environment is often indirectly discriminatory to people with disabilities. The amended Act has also given more efficient options for intervening in racist harassment (such as the National Non-Discrimination and Equality Tribunal's decision to ban the public display of the Nazi flag) and prohibiting ethnic profiling (not legally valid yet).

Not all experiences of the Non-Discrimination Act are positive, however. The Non-Discrimination Act's and its underlying directives' objective that discrimination should lead to efficient and cautionary sanctions is still largely unrealised. The Ombudsman finds the principal issue to be that, in order to claim compensation for discrimination under the Non-Dis-

crimination Act, the victim must sue the discriminating party. Few victims of discrimination have the resources for this, and perpetrators have been ordered to pay compensation under the Non-Discrimination Act in only a few dozen cases since the Act's entry into force in 2004. The Non-Discrimination Ombudsman has proposed that the National Non-Discrimination and Equality Tribunal could also decide on the compensation when processing discrimination matters.

In addition to intervening in discrimination, the duties of the Non-Discrimination Ombudsman also include monitoring the removal of foreign nationals from the country by the police, promoting the status of foreign nationals and acting as the National Rapporteur on trafficking in human beings. In these special themes, the Ombudsman's strategy is to examine the obstacles to the realisation of the rights of victims of human trafficking and persons being removed from the country through studies and investigations. An effectiveness analysis of the Ombudsman's activities in both of these special duties was carried out in 2019. With regard to the role of National Rapporteur on Trafficking in Human Beings, the analysis examined how the position of trafficking victims had changed in the decade during which the Ombudsman has acted as the Rapporteur. It is particularly encouraging that many of the Ombudsman's proposals for improving the position of the

victims of human trafficking have been implemented. One of the Ombudsman's as-of-yet unrealised goals is to enhance the investigation of human trafficking offences by the police by establishing a specialised unit.

In the Non-Discrimination Ombudsman's report to the Parliament, the Ombudsman highlighted the need to improve the status of victims of discrimination. In an international comparison, discrimination at the workplace is addressed very rarely in Finland. The Ombudsman has proposed that the Non-Discrimination Ombudsman could also intervene in discrimination at the workplace, and that employment discrimination issues could also be referred to the National Non-Discrimination and Equality Tribunal. The European Commission against Racism and Intolerance ECRI also made the same suggestion to Finland in 2019. The Non-Discrimination Ombudsman considers it essential to present a partial reform of the Non-Discrimination Act to Parliament during this administration in order to rectify the shortcomings in the legislation as soon as possible.

Rainer Hiltunen

acting Non-Discrimination Ombudsman

ted. It is extremely difficult to exercise such case-by-case discretion without thorough training on non-discrimination.

Customs is developing its training and instructions as a result of this process. Customs will provide surveillance personnel with training concerning the prohibition of discrimination and draw up guidelines for applying the prohibition. In addition, Customs will take the discussions with the Non-Discrimination Ombudsman into account when updating their equality promotion plan. The Non-Discrimination Act requires all authorities to prepare an equality promotion plan.

DIFFERENT TREATMENT BASED ON ETHNICITY IS RARELY ACCEPTABLE

The Non-Discrimination Act, Constitution, along with the relevant national and EU law and the established legal praxis for their interpretation must be considered in the prevention of discrimination and the assessment of actual cases. Ethnic origin as a ground for discrimination enjoys particularly strong protection in legislation, and different treatment on the basis of ethnicity is acceptable in only certain very rare cases.

When assessing discrimination prohibited by the Non-Discrimination Act, it is necessary to assess on a case-by-case basis whether there is an acceptable reason for the conduct in our system of fundamental rights, as well as whether the means employed were proportionate to achieving the acceptable goal in question. If different treatment is based on ethnic origin, it must be specifically justified in an act. No one must be singled out for action by the authorities due to skin colour alone – it would clearly constitute discrimination based on ethnicity, which is prohibited. In the assessment of discrimination, it is irrelevant whether the perpetrator's intent was to discriminate against the victim, for example whether the acts had a racist or otherwise discriminatory motive.

When looking for a wanted suspect or individual suspected of illegal activity, the background information available to the authorities varies depending on the situation. They may have a fairly accurate description of the person's appearance or information on, for example the individual's name, gender, age or ethnicity. If there is no photograph or other description of the individual's appearance, such as skin col-



Ethnic origin as a ground for discrimination enjoys particularly strong protection in legislation, and different treatment on the basis of ethnicity is very rarely acceptable.

our, the Non-Discrimination Act leaves it up to the specific circumstances whether the authorities are permitted to make assumptions about the individual's skin colour based on their name or nationality.

It is not legal to assume the skin colour of the wanted person unless there are sufficiently weighty objectives in the public interest for which it is necessary to assume the wanted individual's skin colour.

The factors affecting this consideration are the importance of the interest being safeguarded by the authorities' activities, such as the seriousness of the suspected offence, along with the proportionality of the selected methods to the objective and situation at hand. Treating people differently because of their origin is not permitted even for acceptable purposes, such as apprehending a suspect, if the methods employed are inappropriate or disproportionate to the circumstances. Relying on the assumed colour of an individual's skin is also discrimination if it would be unnecessary because the wanted individual can be apprehended by other means more consistent with equal treatment. The size of the group in which the wanted person is being sought is also a material factor in this assessment.

Therefore, if the security authorities think the wanted person's assumed skin colour is relevant to apprehending them, the situation always requires an assessment of the objective's acceptability and the proportionality of the methods employed, as provided for in the Non-Discrimination Act.

SECURITY AUTHORITIES MUST PROMOTE EQUALITY

It is particularly important for security authorities such as the police, the Border Guard and Customs to ensure that their practices do not violate the prohibition of ethnic discrimination. The prohibition of “ethnic profiling” is commonly spoken of, but the concept does not exist in law. Ethnic profiling usually refers to situations where the only or decisive reason why, for example, the police verify a person’s identity is their assumed ethnicity, religion or language.

The Non-Discrimination Ombudsman discussed the topic with Customs, the Police Board, the Helsinki Police Department and the Police College of Finland in 2019. The Ombudsman highlighted the need for training on preventing ethnic profiling and its discussion as part of non-discrimination planning.

The Non-Discrimination Act gives the authorities a specific obligation to promote equality. The authorities must therefore, among other things, ensure that staff are given sufficient guidance to take the prohibition of discrimination into account in their work. It is particularly important for security authorities to ensure that their practices do not violate the prohibition of ethnic discrimination.

Even a subjective experience of ethnic discrimination has serious negative social consequences extending beyond the affected individuals. Studies show that the experience of ethnic discrimination, for example erodes trust in public authorities and creates a feeling of exclusion from society. The security authorities must therefore ensure that their activities do not cause unnecessary experiences of ethnic discrimination. It is also important to justify measures to the individuals affected by them if at all possible in the circumstances.

STATEMENT TO THE COURT ON THE POLICE AND THE ETHNIC PROFILING DECISION BY THE NATIONAL NON-DISCRIMINATION AND EQUALITY TRIBUNAL

In its decision of 19 December 2018, the National Non-Discrimination and Equality Tribunal found that the Helsinki Police Department committed ethnic discrimination in its prostitution surveillance (337/2018). The Tribunal’s decision referred to the prohibition of ethnic profiling. The Ombudsman issued a statement to the Helsinki Administrative Court on the matter in accordance with section 27 of the Non-Discrimination Act, in which the Ombudsman concurred with the Tribunal in considering that the police discriminated against the individuals subjected to the measure.

The Administrative Court will give its decision in due course, possibly later this year. In any event, the case shows that the police must take the prohibition of ethnic discrimination particularly seriously in all activities, including the surveillance of prostitution and foreign nationals, and review current police practices. The management of police stations must ensure that everyday practices are non-discriminatory. There is also a need to invest in providing regular training for the police.

The Finns Party Youth's Twitter post violated the human dignity of black people and constituted harassment prohibited by the Non-Discrimination Act

The Finns Party Youth posted a racist update on their Twitter account on 18 May 2019. The Ministry of Education and Culture asked the Ombudsman's opinion on whether the activities of FP Youth had infringed the Non-Discrimination Act and were in conflict with the objective of promoting equality defined in the Youth Act.

The Ombudsman found that FP Youth's Twitter post could legitimately give rise to the impression that it urges readers to vote for the Finns Party so that there would be fewer black people living in Finland in the future. In other words, individuals were invited to choose their candidate to promote activities that are considered discrimination on the basis of ethnic origin.

The Ombudsman found that FP Youth's Twitter message violated the human dignity of black people and had fostered a *hostile, degrading and humiliating* atmosphere for them. The Ombudsman also drew attention to the fact that, in the debate following the Twitter post, representatives of FP Youth had clarified the content of the message with racist and ethnonationalist comments glorifying the white population. Many other people who participated in the discussion on social media also posted highly offensive and hostile comments to the FP Youth Twitter post. On the basis of international legal praxis, the Ombudsman considered that FP Youth had a clear responsibility for the very likely consequences of the Twitter message. In this case, it was even obvious that the message would lead to comments categorised as forbidden hate speech.

To qualify for state aid, youth organisations must work towards the goals and premises of the Youth Act, such as non-discrimination, equality, cultural diversity and internationalism. The Ministry can withdraw an organisation's state aid if its activities do not meet the conditions for state aid. The Om-



To qualify for state aid, youth organisations must work towards the goals and premises of the Youth Act, such as non-discrimination, equality, cultural diversity and inter-nationalism.

budsman considers that, since FP Youth could justifiably be interpreted to have violated the prohibition of discrimination on the grounds of ethnic origin and insulted the human dignity of the black Finnish people and residents of Finland, the activities of FP Youth were in clear contradiction with the Youth Act's objective of promoting equality.

The Ombudsman also assessed the issue from the perspective of freedom of speech. **The Ombudsman noted that freedom of speech is not an unlimited right but may be restricted if necessary for weighty social reasons.** With reference to the decision practice of the European Court of Human Rights, the Ombudsman stated that activities aimed at undermining human rights or clearly directed against the values on which human rights are based, such as tolerance and non-discrimination, does not enjoy the protection of freedom of speech.

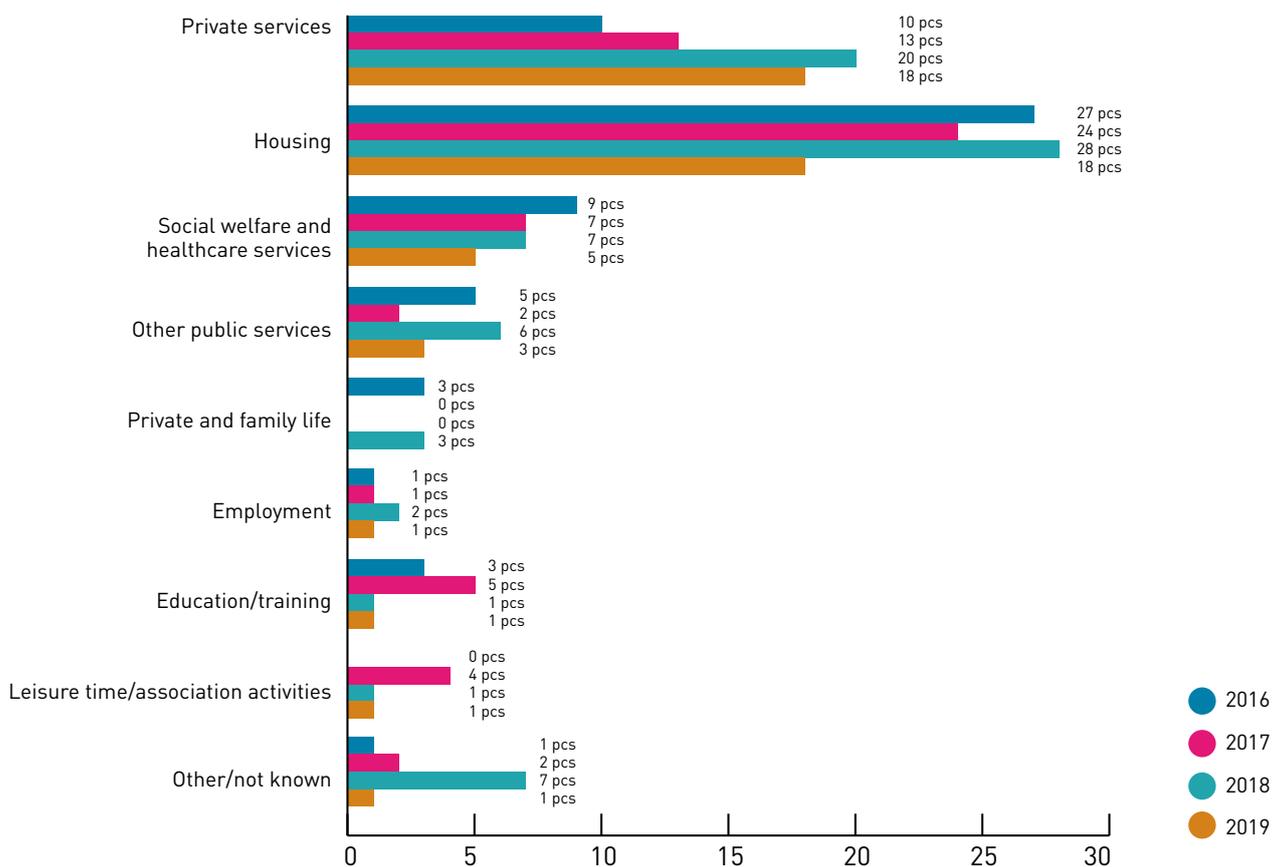
In June 2019, the Ministry of Education and Culture decided to cancel the Finns Party Youth's state grant for 2019 and demanded repayment of the grant already paid to them for that year. The reason for this decision was that the Ministry considered the organisation's activities to have violated the objectives of the Youth Act.

The right to a home is one of our most important fundamental rights. Housing conditions affect the possibility of participating actively in working life and other activities in society and are also an important starting point for ensuring that the preconditions of stable schooling can be guaranteed for the next generation. The dialogue initiated by the Non-Discrimination Ombudsman with the Housing Finance and Development Centre of Finland (ARA) on taking the promotion of equality into account in the use of ARA-funded housing will hopefully have a positive impact on the promotion of equal treatment for Roma in housing matters.

The Ombudsman also promoted non-discriminatory practices on the private housing market through further cooperation with national real estate operators. As a result of this cooperation, the Non-Discrimination Act and its obligations were integrated into the Real Estate Agent's Manual and real estate agent training. Furthermore, the Ombudsman's talk at Finland's national real estate agents' conference in October reached a large number of major operators in the real estate agency business. Non-discrimination legislation was also included in the **guidelines for rental agents** last year. An equal housing market will help not only the Roma, but other minority groups as well.

CONTACTS RECEIVED BY THE OMBUDSMAN ON DISCRIMINATION AGAINST ROMA IN 2019

ALL CONTACTS 51 (3.3% OF ALL CONTACTS)



The Ombudsman was contacted in 51 matters concerning Roma in 2019, 47 of which were discrimination contacts. Of all contacts, 18 concerned private services (2 fewer than in 2018) and another 18 housing (10 fewer than in 2018). Five contacts concerned social and health care services (2 fewer than in 2018). Three concerned other public services (half as much as in 2018) and 3 private and family life (no cases in 2018). One contact was made about working life (half as much as in 2018), 1 about training and 1 about leisure time or unions and associations. In addition, one contact concerned other or unknown grounds for discrimination (6 fewer than in 2018).

THE ROMA FACE DISCRIMINATION IN ALL EVERYDAY SITUATIONS

A typical case of suspected discrimination in private service provision is denial of service or providing a service under limited or offensive conditions. The discrimination is frequently motivated by stereotypical ideas; as a result, Roma customers are treated as representatives of their group instead of as individuals. According to an interview-based Eurobarometer survey published by the European Commission in 2019, negative attitudes towards Roma are still prevalent in Finland. The negative prejudices against the Roma as a group thus manifest as individual cases of discrimination.

An open and matter-of-fact manner of referring to the Roma background is typical of the contacts related to service provision. The Non-Discrimination Ombudsman promoted reconciliation in a matter in which a salesperson at a clothes shop in a major shopping centre told Roma customers that a guard had been called to follow them due to the shop's policy of having all Roma customers followed.

The Ombudsman has started a dialogue with security service providers due to the discrimination against Roma in shops and the findings of the University of Helsinki's 2018 study "The Stopped – Ethnic Profiling in Finland". The Ombudsman arranged a meeting with the Finnish Roma Association and the Union of Finnish Security Service Providers and its membership companies. The discussion on the implementation of the obligation to promote equality in security is ongoing.

The Ombudsman has also promoted reconciliation in a case where Roma were denied entry to a restaurant due to the restaurant's dress code, which did not allow the traditional costumes used by Roma women, for example. The restaurant justified its practice on the grounds that the outfit could provoke other customers and also give rise to claims for compensation if it was damaged. The Non-Discrimination Ombudsman does not consider the explanations given by the restaurant to constitute a justification for the practice under the Non-Discrimination Act.

The Ombudsman gave a statement on a criminal matter in which charges were being considered due to a violation of the human dignity of a Roma family of five. The suspect was an operator of an amusement park ride who played a song with lyrics mocking the Roma when the Roma family arrived. While the song played, the operator also kept gesturing at the family to bring them to the attention of other customers. The prosecution brought charges for discrimination and defamation in accordance with the Non-Discrimination Ombudsman's statement and the case was resolved this year. The perpetrator was convicted as charged.

The Ombudsman has received requests for statements under section 27 of the Non-Discrimination Act and also given statements on cases in which the injured party has not contacted the Ombudsman personally. In addition, the Ombudsman's customer service has advised several people of Roma background to report offences to the police.

In the Ombudsman's opinion, the increase in contacts concerning private services is above all due to the Roma people's improved awareness of their rights and the Ombudsman's power to intervene in such cases. This development can thus also be seen in a positive light.

Finland has committed to international treaties safeguarding the linguistic and cultural rights of the indigenous people. A number of projects that support Sámi education have been launched and implemented in recent years.

The increase in demand for Sámi-language early childhood education and care led to a shortage of qualified Sámi-speaking staff. This deficit was filled with a training project funded by the Ministry of Education and Culture and carried out by the University of Oulu and Sámi [Education Institute in 2016–19](#).

Due to the lack of qualified subject teachers, not all subjects are taught in Sámi languages, but this shortage also means that there are very few qualified people to produce and update study materials in all three Sámi languages spoken in Finland. The Ministry of Education and Culture has responded to this need by granting funding to the University of Oulu's three-year [Ketterä korkeakoulu](#) (Agile University) project.

The obligations concerning education in Sámi only apply to the homeland municipalities, but about 70% of Sámi children and young people of basic ed-

ucation age live outside the homeland. For the past year, the municipality of Utsjoki has provided nationwide remote teaching in Inari, Skolt and North Sámi in [a pilot project](#) funded by the Ministry of Education and Culture.

The Finnish school system is a structure whose components related to rights, obligations, resources and supervision are seamlessly interconnected. Due to legislative shortcomings, Sámi education has had to be welded to the frame of the Finnish school system with a tangle of ad hoc projects. For example, the legislative status of language nest activities is unclear. This is not a sustainable solution for safeguarding the linguistic and cultural rights of an indigenous people.

The projects currently underway are doing an excellent job in promoting Sámi education. Their continuity must be secured in the coming years. At the same time, however, legislation must be developed to render such projects obsolete. Legislation must be developed so that the resources and organisation of Sámi education guarantee every Sámi an education that safeguards their linguistic and cultural rights.

USE OF ARTIFICIAL INTELLIGENCE IN THE BANKING AND INSURANCE SECTORS

The Ombudsman continued to promote equality in the banking and insurance sectors in order to prevent discriminatory algorithmic decision-making and profiling. The Office of the Ombudsman conducted discussions with the Financial Supervisory Authority on the basis of the decision issued by the National Non-Discrimination and Equality Tribunal in 2018 (216/2017), encouraging the Financial Supervisory Authority to pay attention to the non-discriminatory nature of credit decision formulas in its supervision

of credit institutions. The Office of the Ombudsman also arranged meetings with representatives of the largest credit institutions and Finance Finland for discussing the subject.

In 2019, the Non-Discrimination Ombudsman discussed the links between artificial intelligence and discrimination with a wide range of actors. The Ombudsman reminded ministries and other authorities of their obligation to assess the impact of artificial intelligence on equality already at the design stage, in accordance with their duty to promote equality.

Discrimination is a major obstacle to employment and promotion in Finland

Promoting equality in working life needs to be stepped up. Therefore, the Ombudsman has proposed that it should have the authority to investigate individual cases of discrimination and monitor the employer's obligation to promote equality alongside the occupational safety and health authorities.”

Discrimination in employment restricts the rights of individuals and their opportunity to participate fully in working life, and is therefore detrimental to the cohesion and efficiency of our society as a whole. The prevention of discrimination and promotion of equality at work is addressed both in international agreements and European Union law and is one of the most important aspects of our discrimination legislation. The current Non-Discrimination Act is largely based on directives adopted by the European Union, which require, among other things, providing assistance to the victims of discrimination and promoting the principle of equality. In Finland, this task is performed by the Equality Ombudsman and the Non-Discrimination Ombudsman. However, unlike the Equality Ombudsman, the Non-Discrimination Ombudsman does not have the mandate to monitor individual cases of discrimination in employment.

Discrimination is a major obstacle to employment and promotion in Finland. Discrimination has a detrimental effect on the well-being of workers, which, according to studies on discrimination in working life, is also reflected at the Group level. In the Ombudsman's opinion, Finland's fragmentary supervision legislation is a significant contributing factor to the current state of affairs. Neither is there a body in Finland for promoting public discussion on equality issues of working life. Finland has received international criticism about the current situation¹. Anti-discrimination measures aimed at promoting equality in Finnish working life are currently isolated, and failure to comply with the established legal obligations does not always result in sanctions. There is no comprehensive reporting on the fulfilment of the employers' obligation to promote equality. Promoting equality in working life needs to be stepped

¹ CRI(2019)38 10.9.2019 <https://rm.coe.int/fifth-report-on-finland/1680972fa7>

it can intervene in such situations and what is the school's responsibility for identifying discriminatory situations.

The purpose of the work practice program period in school is to enable the student to gain familiarity with working life during school. Discrimination at the workplace is prohibited, also against trainees. Cases in which Roma youth experienced discrimination at the workplace already in comprehensive school instead of gaining positive work experiences came to light during the year. In the example, the young person's work experience period was cancelled due to her using a wheelchair and needing an assistant, without assessing the required accommodations and arrangements as required by the Non-Discrimination Act.

Work practice program is part of the comprehensive school curriculum. Education organisers must promote the realisation of equality in all their activities in a goal-oriented and systematic manner. In the event of problems, the school must identify situations that are discriminatory or otherwise jeopardise the realisation of equality and support the pupil in such situations. In challenging situations, pupils are at a disadvantage due their age and lack of information and experience compared to their employer for the work experience period. School support is crucial also for this reason.

Although work practice program is part of comprehensive school, the prohibition of discrimination applies equally to work practice program employers.

What happened to the girl in the example? She eventually found a to work practice program position with another employer, but the experience of discrimination remains.

START-UP GRANT DENIED FOR GROUNDS OF STATE OF HEALTH

The Non-Discrimination Ombudsman gave a statement to the District Court of Helsinki in a case where a person was refused a start-up allowance on the basis of their state of health. The individual's ability to work within the limits of their state of health had been confirmed, for example by a decision of public-sector pension insurer Keva. The TE Office had

first rejected the plaintiff's application for a start-up grant because the plaintiff was unable to act as a full-time entrepreneur in nursing due to their health. The Office subsequently gave further justifications for the refusal, invoking other grounds such as the early childhood education and care arrangements of the plaintiff's child and the viability of the business idea. The plaintiff filed a discrimination suit with the District Court. The Ombudsman took the view that, if the Court came to the conclusion that there is a presumption of discrimination based on the plaintiff's state of health in the case, the TE Office must demonstrate that the plaintiff's state of health has objectively been an obstacle to acting as a full-time entrepreneur in the less strenuous nursing duties described in the plaintiff's business concept. The statement was given in late 2019 (on 1 November 2019) and the Ombudsman has not yet been informed of the District Court's decision at the time of writing.

REASONABLE ACCOMMODATIONS

Under section 15, subsection 1 of the Non-Discrimination 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 deal with the authorities and gain access to education, work and generally available goods and services.

The right of a person with disability to reasonable accommodation is thus assessed on the basis of current needs, and the right to accommodation cannot depend on any previously established need for assistance or aid previously applied for. Reasonable accommodations are individual in nature.

According to the UN Convention on the Rights of Persons with Disabilities (CRPD), people with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Disability can therefore be determined on a case-by-case basis: the same person may be disabled in one context but not in another.

Reasonable accommodations

It is the Non-Discrimination Ombudsman's view that special arrangements for the matriculation examination should be based on the candidate's need for accommodation.

REASONABLE ACCOMMODATIONS IN THE MATRICULATION EXAMINATION

The Matriculation Examination Board has updated its regulations on implementing reasonable accommodations for students in the matriculation examination. The Non-Discrimination Ombudsman issued a statement on the matter at the regulation's drafting stage.

Authorities and education providers are obligated to promote equality under the Non-Discrimination Act. The Ombudsman's statement drew particular attention to the fact that the equality of means of taking the matriculation examination requires, among other things, that taking the digital matriculation examination is actually possible with the aids required by individuals with different types of disabilities, such as with screen readers for persons with visual impairment, and that the matriculation examination can be taken on paper for justified reasons such as disability or state of health. Accessibility may also require adjustments to the examination schedule. Furthermore, equality also requires the examination materials to be of the same high standard in all languages and substitute assignments based on disability.

The Ombudsman's statement stressed that access to reasonable accommodations under the Non-Discrimination Act cannot be prevented by the impossibility of implementing a particular arrangement in all Finnish upper secondary schools. The need for accommodation always stems from the individual, and the reasonableness of its implementation must be assessed in relation to the candidate's own school. The general principles expressed in the final wording of the regulation reflects the case-by-case nature of special arrangements: "The content of special arrangements shall be determined on a case-by-case basis according to the nature of the causes and the degree of difficulties caused by them".

The description of special arrangements states what candidates may have at their disposal without the express permission of the Board. The Ombudsman's statement pointed out that common aids necessary for people with disabilities should be added to the list. This should be obvious, but bears mentioning for the sake of clarity. The list is complemented with common aids required by people with disabilities in the final wording of the regulation.

The Ombudsman drew attention to the fact that the need for a separate small group space or personal space must be based on the needs of the candidate. The digital matriculation examination has made it more difficult to arrange appropriate premises. The final wording of the regulation includes a separate small group space, in which the examination is taken by up to eight candidates, or a separate small group space screened off from the actual examination space as alternatives for providing a separate small group space. In exceptional cases, the candidate can also take the examination alone in a separate individual space.

Attention should be paid to the quality of the examination for people with impaired hearing and vision. A person with impaired hearing may be granted the right to take an examination with limited audio material, in which case the candidate will not take the hearing comprehension test. The Ombuds-

man's statement noted that it is somewhat problematic that there are no other options for candidates with impaired hearing, even though the level of hearing disabilities can vary widely. The introduction of a digital examination would allow for new ways of taking special groups into account. For example, it could be possible to introduce a clearer customised hearing comprehension test suitable for some people with impaired hearing, such as in the form of a video. The final regulation does not mention any other alternatives or possibilities for hearing comprehension tests suitable for persons with impaired hearing other than an examination without audio material.

The regulation discusses various reasons that can impair examination performance. The Ombudsman welcomes the fact that a particularly difficult life situation is included in these reasons. The Ombudsman considers it important that different situations are taken into account in the need for special arrangements and that the list of reasons entitling to special arrangements is kept open. This permits catering for impairments such as various neurospectrum disorders or special linguistic disabilities.

It is the Non-Discrimination Ombudsman's view that special arrangements for the matriculation examination should be based on the candidate's need for accommodation. The Non-Discrimination Act should be invoked to ensure that the individual nature of reasonable accommodations is taken into consideration. The accommodations required by a candidate can take the form of other individual measures than those listed in the regulation. In general, the threshold for granting special arrangements should not be set too high when there is a clear need for the arrangement.

DENIAL OF REASONABLE ACCOMMODATIONS IN HIGHER EDUCATION

The Non-Discrimination Ombudsman issued a statement on the consideration of charges for denial of reasonable accommodations in higher education. An institute of higher education had granted a student the right to accommodations during examinations in an appropriate manner. However, these accommodations were not actually implemented during one examination. The institute justified the difficulties in taking the accommodations into account with the large number of students entitled to ac-

commodations. The Ombudsman considered that the right to reasonable accommodations concerns precisely their implementation in practice. In particular, the Ombudsman stressed that the Non-Discrimination Act obliges major actors, such as higher education institutions, to organise their practices to prepare in advance for the most common accommodation needs. In the view of the Non-Discrimination Ombudsman, the case gave cause to presume that reasonable accommodations had been denied.

CHALLENGES REMAIN IN SCHOOL TRANSPORT FOR CHILDREN WITH DISABILITY

School transport is one form of support for children. For it to provide genuine support, it must be arranged on the basis of the child's needs. The challenges of school transport are regularly reflected in the work of the Non-Discrimination Ombudsman.

The Non-Discrimination Ombudsman gave a statement to the Supreme Administrative Court in a matter concerning school transport. In the case, twins with were entitled to school transport to their local school due to disabilities. After the family moved, the children stayed in their old school as recommended by their physician. Although the distance to their school was not any longer, the city refused them the right to school transport because the children's school was no longer their local school. This seemingly equal rule concerning transport places those in need of school transport due to disability or state of health in a disadvantaged position with regard to their right to continue at their old school after moving.



The aim of school transport is to enable children to enjoy their right to basic education. Problems in school transport can jeopardise the child's right to basic education."

Based on the medical reports, transport should also have been provided as a personal accommodation due to the children's disabilities. According to the Non-Discrimination Ombudsman, the case involves a presumption of both indirect discrimination and a refusal to make reasonable accommodations.

The Non-Discrimination Ombudsman also issued a statement to the Administrative Court of Hämeenlinna in a case involving school transport. The question was whether the municipality discriminated against a child with disability by holding, in accordance with established legal praxis, that the child was entitled to school transport only from the address recorded for the child in the Population Register. The municipality rejected the application of the person with disability for transport from a children's home in another municipality, where the municipality had arranged alternating residence for the child. The Ombudsman considered that there was a refusal to make reasonable accommodations, since the municipality was unable to demonstrate why granting transport also from the children's home would have been unreasonable. The Administrative Court came to the same conclusion as the Ombudsman.

The aim of school transport is to enable children to enjoy their right to basic education. However, it often seems that guaranteeing the quality of the pupil's education falls by the wayside in the calculation of costs, which focuses on the technical arrangements for delivering the child to and from school. Problems in school transport can jeopardise the child's right to basic education.

In the case of children with disabilities, the situation is particularly sensitive. When school is not always easy in the first place, the stress added by school transport does nothing to ease the situation. Costs are not an acceptable reason for jeopardising a child's statutory right to education.

Ambiguities on this matter may have arisen from the fact that the Basic Education Act's section on school transport does not take disability into account. This has been reflected in contacts received by the Ombudsman. Some municipal decisions demonstrate an inability or unwillingness to take the Non-Discrimination Act into consideration. However, the Non-Discrimination Act also applies to school transport and all education and early childhood education. The decisions of the education provider can affect children with disabilities in a way that prevents their rights from being exercised equally and can undermine their well-being and ability to cope with school.

Authorities and education providers are obligated to promote equality under the Non-Discrimination Act. This does not mean implementing the minimum measures required by law – or a little less than that. It means assessing the realisation of equality in activities and taking concrete measures. Article 7 of the UN Convention on the Rights of Persons with Disabilities states that the best interests of the child must be a primary consideration in all actions concerning children with disabilities. Article 24 of the Convention deals with the right to education of people with disabilities. According to the Article, persons with disabilities must receive the support required, within the general education system, to facilitate their effective education.



Discrimination against sexual minorities

The Non-Discrimination Act prohibits discrimination on the grounds of sexual orientation. However, the Non-Discrimination Ombudsman receives only few discrimination contacts based on sexual orientation. In 2019, the Ombudsman received a total of 920 discrimination contacts, of which only 16 were on grounds of sexual orientation. A large part of discrimination is left out of official statistics due to underreporting.

In 2019, the European Commission published the results of its [Eurobarometer survey](#) on discrimination. The Eurobarometer survey examined attitudes and experiences of discrimination related to LGBTI people, among other things.

In the EU, 58% of people belonging to sexual minorities had experienced discrimination or harassment in the 12 months preceding the survey. Of those who had suffered discrimination, 23% reported discrimination in public spaces, 21% at work and 13% when seeking employment.

The Ombudsman's work to promote equality requires up-to-date information on the experiences of people belonging to sexual minorities. A large part of discrimination is left out of official statistics due to underreporting. The Ombudsman participates in Pride events, for example to remind members of the LGBT community of the Non-Discrimination Act's prohibition of discrimination based on sexual orientation, and to talk about the Ombudsman's actions against discrimination and for the promotion of equality. The Office of the Non-Discrimination Ombudsman participated in the Oulu Pride procession and park festival in August 2019. The Non-Discrimination Ombudsman had a tent for sharing information on the Ombudsman's activities at the park festival.

THE NON-DISCRIMINATION OMBUDSMAN PROMOTED RECONCILIATION IN A DISCRIMINATION CASE ON THE ÅLAND ISLANDS

In 2019, the Non-Discrimination Ombudsman promoted reconciliation in a discrimination case on the Åland Islands, where a government agency had discriminated against a same-sex couple. The couple wanted to be married at the agency's office, but an official directed them to turn to the District Court, citing reasons of religion. However, an official's own religious beliefs are not a legal or acceptable basis for different treatment in official activities. A settlement was reached with the assistance of the Ombudsman. The agency undertook to take systematic measures for promoting equality, and the same-sex couple received a compensation of EUR 6,000 from it.

The Ombudsman stresses that, under the Non-Discrimination Act, authorities are obliged to promote equality both as employers and in their capacity as public authorities.

The Finnish Non-Discrimination Ombudsman has a mandate to deal with cases of discrimination on the Åland Islands that involve state authorities and other activities in which the Finnish State has legislative power. The citizens of Åland can contact the Åland Non-Discrimination Ombudsman in matters of discrimination falling under provincial jurisdiction.

EQUALITY IN INFERTILITY TREATMENTS HAS IMPROVED

The university hospitals of Tampere and Helsinki started fertilisation treatments with donated eggs and sperm in late 2019. Turku University Hospital began offering donated sperm treatments from the beginning of 2020. Treatment with donated reproductive cells is not yet available at the university hospitals of Kuopio and Oulu, but the matter is under preparation in both and donated reproductive cell treatments are slated to begin in 2020.

This positive change is the result of years of work. The legal process for achieving equality in infertility treatment practices has been a long one, and one which required years of advocacy by non-governmental organisations to prepare the ground.

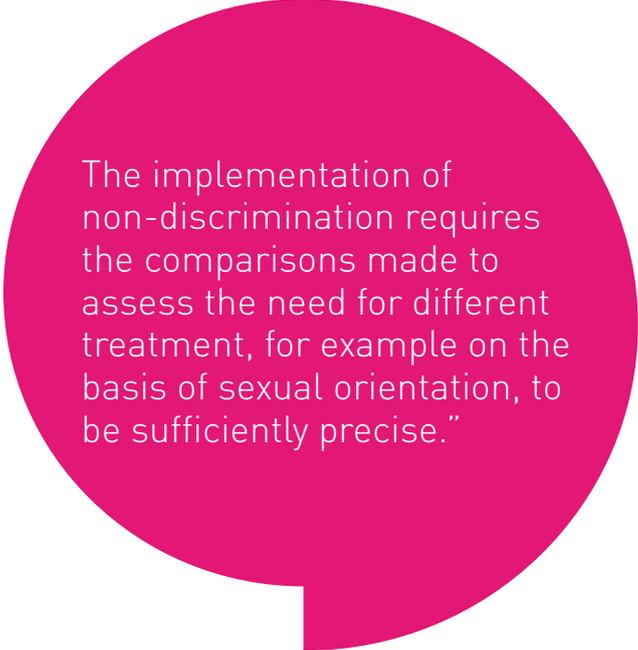
As early as June 2015, a couple contacted the Non-Discrimination Ombudsman. They said that the hospital district had refused to give them infertility treatment, for example because donated reproductive cells would be required and the treatments were not given to female couples. The decision to refuse infertility treatments was based on policy decided by the chief medical officers of the university hospitals. The Non-Discrimination Ombudsman referred the case to the National Non-Discrimination and Equality Tribunal, which found the conduct to constitute discrimination. The judicial process is still pending in the Supreme Administrative Court, even though the discriminatory practices have already been changed.

The Act on Assisted Fertility Treatments, which entered into force in 2007, improved the rights of female couples and single women to treatment. In 2014, the Ministry of Social Affairs and Health issued guidelines to the hospital districts, reminding them that treatments should not be refused in a discriminatory manner. In practice, however, such treatments have not been provided in public health care before the policy changes made in 2019.

BLOOD DONATION PROHIBITION FOR MEN WHO HAVE SEX WITH MEN

The Finnish Medicines Agency Fimea is preparing a new regulation regarding suitability for blood donation. The regulation is expected to be issued by the end of June 2020. Fimea has asked experts for opinions on the donation prohibition for men who have sex with men. According to Fimea's currently valid regulation 6/2013, there is a temporary prohibition on blood donation for 12 months after sex between men. The statements given to Fimea were in favour of reducing the temporary blood donation prohibition resulting from sex between men to four months from the current twelve.

In the Non-Discrimination Ombudsman's statement on the matter, the Ombudsman said that the prohibition on blood donation should be reassessed in the



The implementation of non-discrimination requires the comparisons made to assess the need for different treatment, for example on the basis of sexual orientation, to be sufficiently precise."

light of the currently available testing methods and other research data. In order for sexual orientation (including sexual behaviour) to be subject to different treatment under the law, restrictions must not only be based on an acceptable objective, but also be proportionate with regard to the means employed (in this case, the waiting periods).

As research methods have developed and the reliability of test results has increased, it would appear justified to shorten the current 12-month blood donation ban in some situations. In the Ombudsman's opinion, sex with a new partner of other sex currently imposes a 4-month ban on blood donation. It is the view of the Ombudsman that applying a corresponding 4-month donation ban to men who have sex with a new male partner would be justified.

However, the Ombudsman is of the opinion that the prohibition on blood donation applying to men living in a permanent relationship with another man should also be assessed in this context. The current permanent prohibition on blood donation for men who are in a long-term relationship with a same-sex partner is not proportionate in comparison to those living in a relationship with a person of other sex. The Ombudsman suggested that preparations should be continued by examining whether up-to-date research shows that men living in an established relationship with a man have an increased

risk of communicable disease, and how to avoid the potential risk in a proportionate manner.

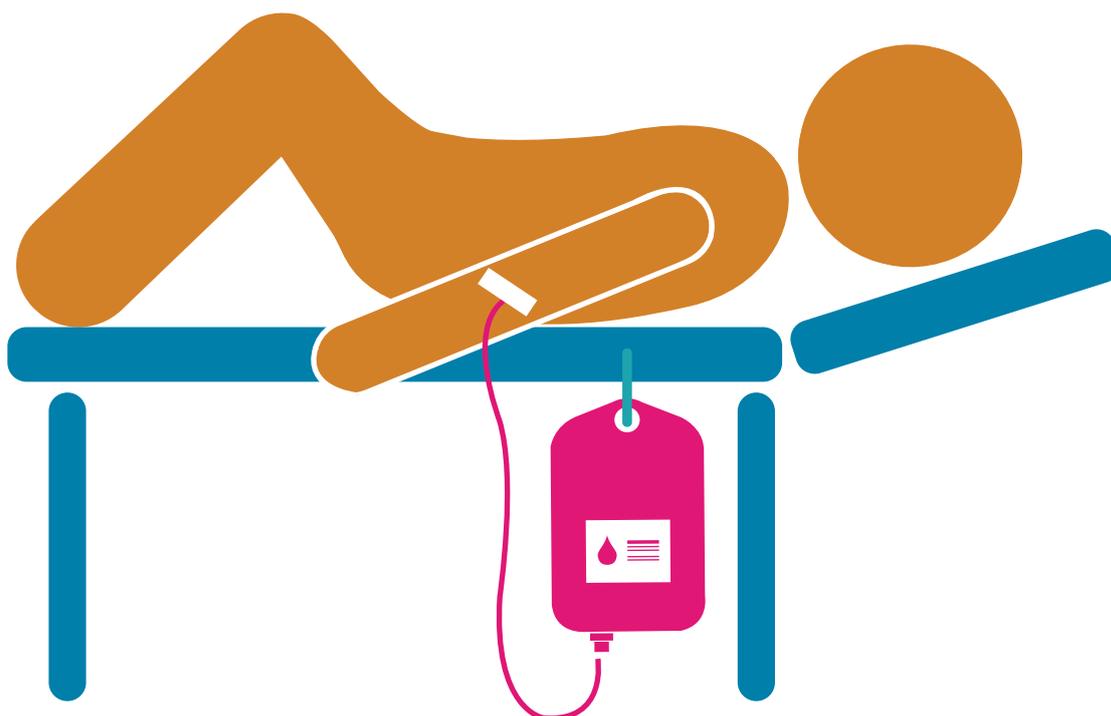
The implementation of non-discrimination requires the comparisons made to assess the need for different treatment, for example on the basis of sexual orientation, to be sufficiently precise. At present, having sex with a partner of other sex does not cause a donation ban to a man during a relationship, but having sex with a same-sex partner does result in a donation ban for the duration of the relationship. For such difference in treatment to be considered proportionate, it must be based on up-to-date knowledge and a comparison between men who live in a relationship with a man and those whose partner is a woman. General information on infections resulting from sex between men cannot be considered to constitute a sufficient base of knowledge. The Ombudsman is not aware of up-to-date research that would show that gay men living in an established relationship pose a particular risk to the safety of blood donation.

If the research data indicates that blood donation involves an elevated risk in some circumstances, this risk should be reduced, for example, with fixed-term

prohibitions on donation as is the case today. The lengths of the donation bans should also be compared to ensure proportionality.

The Ombudsman considers that the important objectives on which the guidance of the Blood Service's activities is based can be achieved by amending the current regulation. The length of possible donation bans must be based on the information obtained on infection risks and current testing methods. According to Fimea's current regulation (point 4.3.2.2.2), sex with a new non-male partner results in a donation ban, in practice for a period of four months. The Ombudsman considers that a similar temporary prohibition on donating blood should apply to sex between men when the partner is new, and the general donation ban related to sex between men should be abolished at the same time.

The equality of blood donation bans has been on the table for a long time in the Non-Discrimination Ombudsman's assessment of discrimination on the basis of sexual orientation in Finland. The Non-Discrimination Ombudsman hopes that Fimea's own development work will lead to the better realisation of equality in the operations of the Blood Service.



The Non-Discrimination Ombudsman's recommendation for public swimming pools: Public swimming pools must support diversity

The acceptance of burkinis as a swim suit varies between public swimming pools. The Non-Discrimination Ombudsman has been notified of public swimming pools that have not permitted Muslim girls and women to swim in burkinis. It is important that all people, Muslim women included, have equal access to public swimming pools.

The Finnish Swimming Teaching and Lifesaving Federation, Aquatics Finland and UKTY (the Technical Association for Public Swimming Pools and Spas) have recommended the acceptance of burkinis and swimming shorts as swimwear already in 2017. **The Finnish, Swedish and English versions of the "Tule uimahalliin" (Come to the Public Swimming Pool) guide were updated with these recommendations in August 2019.**

According to the recommendation, burkinis must be made of material specifically intended for swimming. For safety reasons, the shape of burkinis can be restricted so that, for example, they do not include excessively billowing parts that could snag on something. Every swimmer can be required to wash before going into the pool. Assumptions of a person's hygiene are not a reason to restrict or prohibit the use of burkinis.

With regard to municipal sports facilities and swimming teaching in comprehensive school, it should be noted that the authorities and education providers are obliged to promote equality under the Non-Discrimination Act. Safety and hygiene are acceptable objectives for restricting the use of certain types of swimwear. However, the means used must be proportionate and may not unnecessarily restrict equality or the rights of the individual.

The Ombudsman recommends that all public swimming pools allow the use of burkinis. The Ombudsman also recommends the construction of various private washing facilities to promote equality between all people and groups.

IS BANNING BURKINIS DISCRIMINATION?

The Non-Discrimination Act prohibits both direct and indirect discrimination. If swimming is permitted in a wetsuit but not in a burkini designed for swimming, it may constitute direct discrimination. According to section 10 of the Non-Discrimination Act, discrimination is direct if a person, on the grounds of personal characteristics, is treated less favourably than another person in a comparable situation. If swimming in any long-legged, sleeved and/or hooded bathing suit is not permitted, it can constitute indirect dis-



crimination against women with particular religious beliefs. According to section 13 of the Non-Discrimination Act, discrimination is indirect if an apparently neutral rule, criterion or practice puts a person at a disadvantage compared with others as on the grounds of personal characteristics.

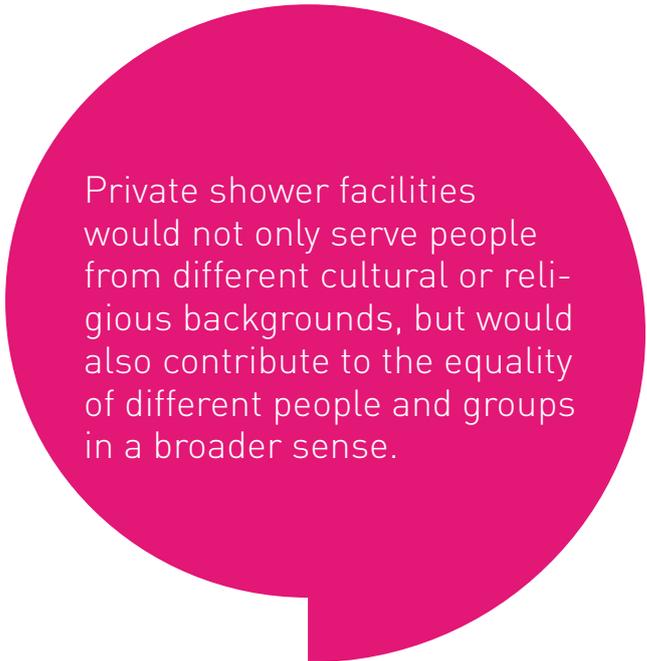
Since the people who use burkini are women, potential discrimination is related to gender as well as religion. The case may thus constitute discrimination on multiple grounds, in which discrimination is based on not only one, but several prohibited grounds for discrimination: in this case, religion and sex.

EVERYONE BENEFITS FROM THE OPTION OF PRIVACY IN THE WASHROOMS

Different people have different attitudes to nudity and it is unpleasant for some to be naked in front of other people. This would be easy to rectify with various types of private shower rooms, and the construction of these is recommended, especially in connection with new construction and renovations. In some situations, privacy can be implemented with less costly arrangements, such as shower curtains.

Private shower facilities would not only serve people from different cultural or religious backgrounds, but would also contribute to the equality of different people and groups in a broader sense. Examples include persons with disabilities or illnesses, or persons belonging to gender minorities.

Movement, dressing and washing can involve difficult and sensitive therapeutic procedures for people with disabilities. The use of a shower chair or assistant can be required, or a person with a disability may have to lie down for therapeutic procedures, which is not possible on normal changing room benches. In addition, public changing rooms can be difficult to navigate in a wheelchair. It may not be pleasant to undergo potentially sensitive therapeutic procedures in sight of other people. Sometimes the assistant of the person with disability is of a different sex than the person being assisted. In such cases, the disabled person cannot use public swimming pools that have no private dressing and shower rooms. The lack of private shower facilities can in reality prevent per-



Private shower facilities would not only serve people from different cultural or religious backgrounds, but would also contribute to the equality of different people and groups in a broader sense.

sons with disability from having equal access to public swimming pools.

THE RIGHT OF WOMEN TO DRESS AS THEY WANT IS ALSO A QUESTION OF EQUALITY

The promotion of equality and women's rights is an important goal. The right of all women to dress as they see fit is a matter of equality, as are restrictions on how women dress. No woman must be forced to dress in a way that she does not want to, not by society (e.g. public swimming pools), not by religious communities, nor by anyone else. However, imposing restrictions or rules on the dress of Muslim women does not promote their rights and equality. Bans may prevent Muslim women using burkinis from being able to swim. For example, a Muslim woman who wears covering garments for religious reasons may like to swim, but a burkini ban would prevent her from pursuing her interests in the way she wants. Such prohibitions also have a negative impact on the individual's right to participate in society on a non-discriminatory and equal basis. For example, in cases resolved in the autumn of 2018 (F.A. v. France, Miriana Hebbadj v. France and Sonya Yaker v. France), the UN Human Rights Committee ruled that, instead of protecting Muslim women, bans on their dress may lead to their exclusion from society.

Library age limits: group sanctions are not acceptable

The minimum age limits set by libraries were the subject of public debate in 2019. Kouvola Library, for example, considered instituting an age limit. The reasons cited for this were vandalism and the disturbances caused by young people.

Similar cases are regularly brought to the attention of the Non-Discrimination Ombudsman. Someone wants to exclude young people as a group from a particular space because people from a certain age bracket have been causing disturbances on the premises.

It is clear that inappropriate behaviour can and must be addressed. Under the Library Act, municipalities may impose a temporary prohibition on the use of a particular library on an individual who repeatedly causes disturbances in the library or damages the library's property. However, the ban may not exceed one month and, what is essential, always applies to an individual customer.

A ban on the use of the library for young people after a certain hour would be some type of group penalty, which are not acceptable. Each person is only responsible for their own conduct and it is not for the authorities to group library users on the basis of prohibited grounds of discrimination, such as age, origin, state of health or disability.

According to the Constitution of Finland, public authorities must guarantee educational rights for

everyone, in this case the right to use library services. An age limit for using the library would interfere with the fundamental right of minors to educate themselves through activities funded with tax revenues.

Libraries are also public authorities and have a duty to promote equality in all their activities. Furthermore, the UN Convention on the Rights of the Child requires promoting the rights of children to participate in all cultural and artistic life.

Discrimination on the basis of age is prohibited by the Non-Discrimination Act. Imposing an age limit on the activities of public authorities is discrimination if there is no legal basis for the restriction. And even a legal basis does not suffice in itself: the prohibition must have an acceptable objective and the means for achieving the objective must be proportionate. The method that imposes the least restrictions on equal treatment must therefore be chosen.

A peaceful library environment is, of course, an acceptable objective, but could it be achieved by means less restrictive on the equality of library users than denying service to minors in the evenings?

Self-service libraries without staff can be an affordable and attractive option for municipalities. However, economic reasons are not a sustainable justification for compromising on equality and children's rights in the activities of authorities.



Poste restante service is a question of equality

In February 2019, the Non-Discrimination Ombudsman received several contacts regarding Posti's announcement of changes to its Poste restante service, which would make the service subject to a fee. The Non-Discrimination Ombudsman was asked to examine whether the reform would be contrary to the Non-Discrimination Act (1325/2014) if implemented.

The Non-Discrimination Ombudsman found that the Poste restante reform announced by Posti would, if implemented, be contrary to the Non-Discrimination Act and would, in its intended form, lead to indirect discrimination against the homeless people and those subject to non-disclosure for reasons of personal safety.

The Poste restante reform would be seemingly equal, but would have adverse effects on people for whom Poste restante is the only possible way of receiving mail. Such groups include at least the home-

less people and those subject to non-disclosure for reasons of personal safety, who do not have a public address in the Population Information System for delivering mail addressed to them.

Posti has a degree of discretion in how it organises its service. However, Posti must ensure that its activities are compatible with the requirements of the Non-Discrimination Act and, in particular, that it does not make decisions that would lead to illegal discrimination in the development or provision of its services. Insofar as it exercises a public administrative duty (duties comparable to those of public authorities), Posti must take the equality effects of its activities into account and seek to promote equality.

In its report, Posti announced that it had decided to postpone the entry into force of the changes to the Poste restante service.

The Non-Discrimination Ombudsman found that the Poste restante reform announced by Posti would, if implemented, be contrary to the Non-Discrimination Act and would, in its intended form, lead to indirect discrimination against the homeless people and those subject to non-disclosure for reasons of personal safety.

Customer service and statistics

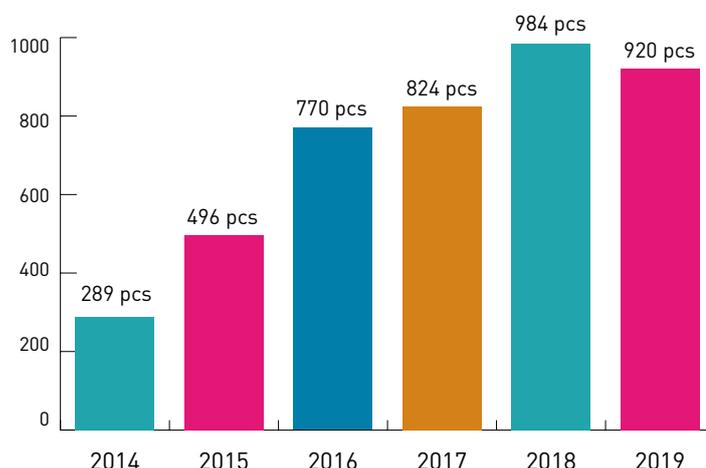
The Non-Discrimination Ombudsman's customer service provides daily advice by telephone and via chat. The Ombudsman also receives contacts in writing – via an online contact form or email, and by letter. Of the contacts received in 2019, 40% were concluded by providing legal advice or other guidance to the customer.

Contacts that are not concluded with advice are assessed to determine whether there is a presumption of discrimination in the case. Depending on the outcome of the assessment and the seriousness and public importance of the case, the matter will either be concluded by replying to the customer and giving them the required advice, or selected for further investigation.

The Ombudsman received a total of 1,439 contacts in 2019, which was 20 fewer than in 2018.

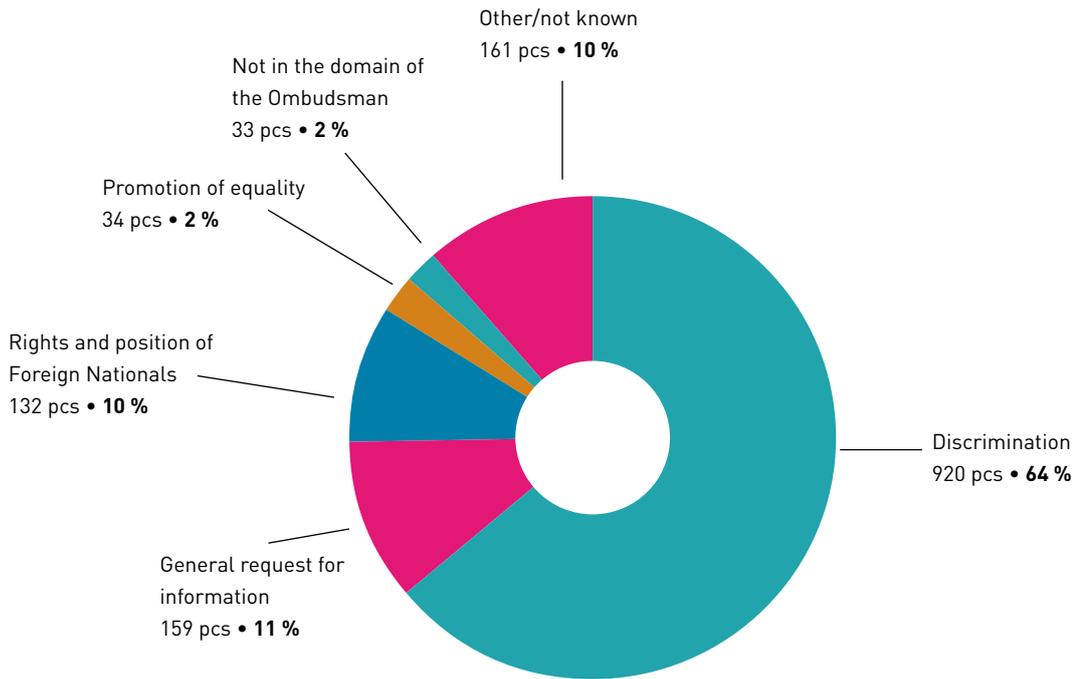
The majority of contacts (64%) concerned discrimination in various services and areas of life. Discrimination contacts related to other private services increased compared to the previous year and remained the most common field of discrimination contacts. Such services include, for example, shops, service stations, security, banking and insurance services. The most common causes of discrimination contacts in other private services were disability (44), other personal characteristics (40) and origin (35).

DISCRIMINATION CONTACTS RECEIVED BY THE OMBUDSMAN, 2014–2019



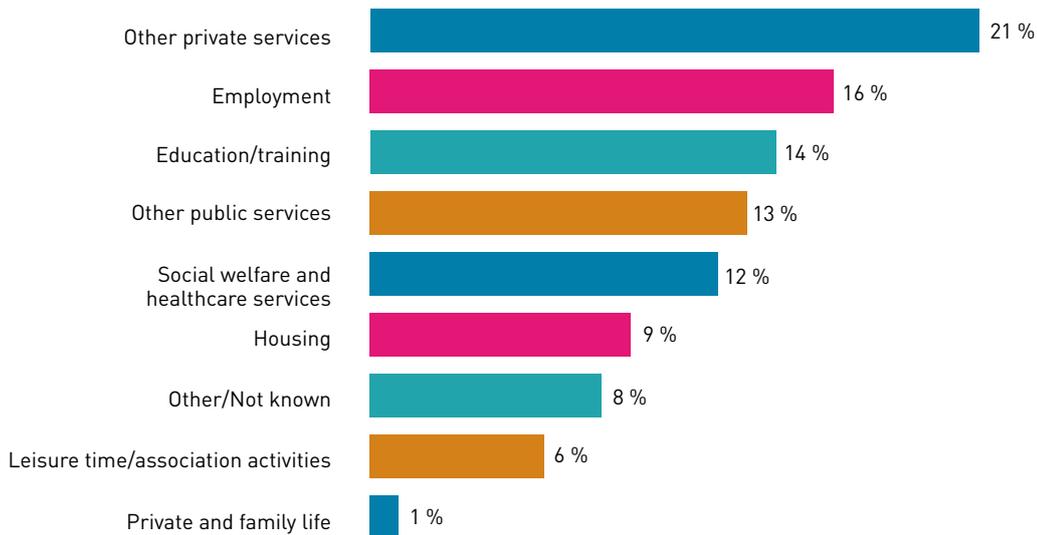
A total of 920 discrimination contacts was received by the Ombudsman in 2019 (64 fewer than in 2018). Of all the contacts, 68 concerned age, 138 concerned origin, 67 concerned nationality, 50 concerned language, 37 concerned religion or belief, 21 concerned opinion, political activity or trade union activity, 20 concerned family relationships, 96 concerned health status, 191 concerned disability, 16 concerned sexual orientation and 150 concerned other personal characteristics. There were 66 cases in which there were no grounds for discrimination or the grounds were unknown.

CONTACTS RECEIVED IN BY THE OMBUDSMAN 2019



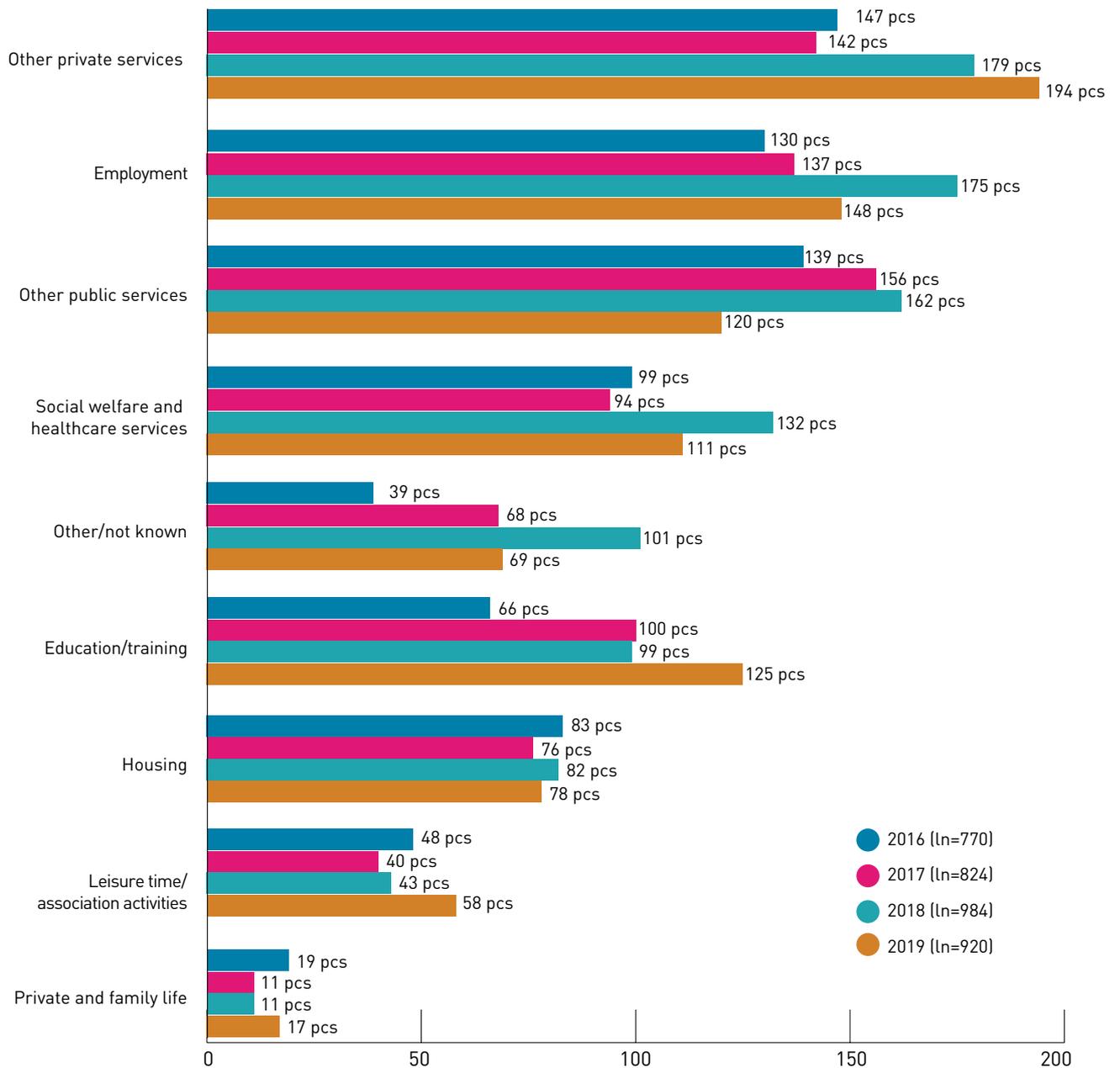
The Ombudsman received 1,439 new contacts in 2019 (20 fewer than in 2018). Of the contacts, 920 concerned discrimination, 159 concerned general requests for information, 132 concerned the status and rights of foreign nationals, and 34 concerned the promotion of equality. Thirty-three of the contacts were outside the remit of the Non-Discrimination Ombudsman, while 161 were made for other or unknown reasons.

DISCRIMINATION CONTACTS ACCORDING TO AREAS OF LIFE, 2019



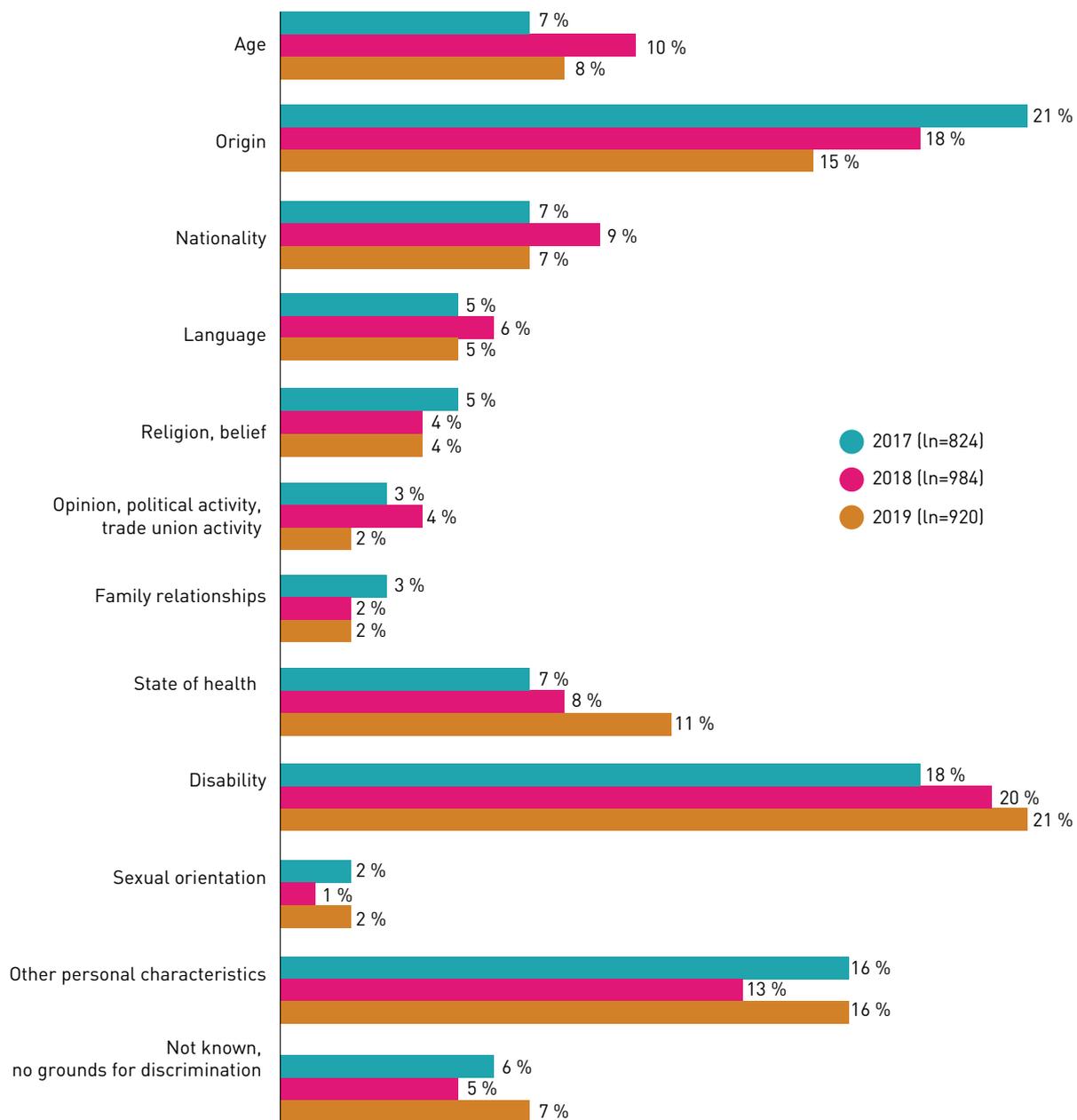
Of the new discrimination contacts received in 2019, 1% concerned private and family life, 6% concerned leisure activities or associations, 9% concerned housing, 14% concerned training or education, 12% concerned social and health services, 13% concerned other public services, 16% concerned working life and 21% concerned other private services. Other and unknown domains accounted for 8% of all discrimination contacts.

DISCRIMINATION CONTACTS ACCORDING TO AREAS OF LIFE



Of the discrimination contacts made in 2019, 17 concerned private and family life, 58 concerned leisure activities or associations, 78 concerned housing, 125 concerned training or education, 111 concerned social and health services, 120 concerned other public services, 148 concerned working life and 194 concerned other private services. A total of 69 contacts concerned other or unknown domains.

DISCRIMINATION CONTACTS ACCORDING TO GROUNDS OF DISCRIMINATION



A total of 920 discrimination contacts were received in 2019. They were divided as follows according to the grounds for discrimination: 8% age; 15% origin; 7% nationality; 5% language; 4% religion or belief; 2% opinions, political activity or trade union activity; 2% family relationships; 11% health status; 21% disability; and 2% sexual orientation. Other personal characteristics amounted to 16% of the contacts. There were no grounds for discrimination, or the grounds were unknown in 7% of the discrimination contacts.

Employment-related contacts constituted the second-largest domain, a total of 148 or 16% of all discrimination contacts, despite the fact that the Non-Discrimination Ombudsman does not have the mandate to handle individual cases of discrimination in working life. In cases involving working life, the customer is usually directed to contact the Regional State Administrative Agency's occupational safety and health department, or to ask for support from their own trade union or from an occupational safety and health delegate. In some cases, the Ombudsman refers the case to the occupational safety and health authorities by virtue of the Administrative Procedure Act. The main grounds for discrimination related to working life were other personal characteristics (31), health status (23), origin (17) and disability (16). The main grounds related to other personal characteristics were place of residence and appearance.

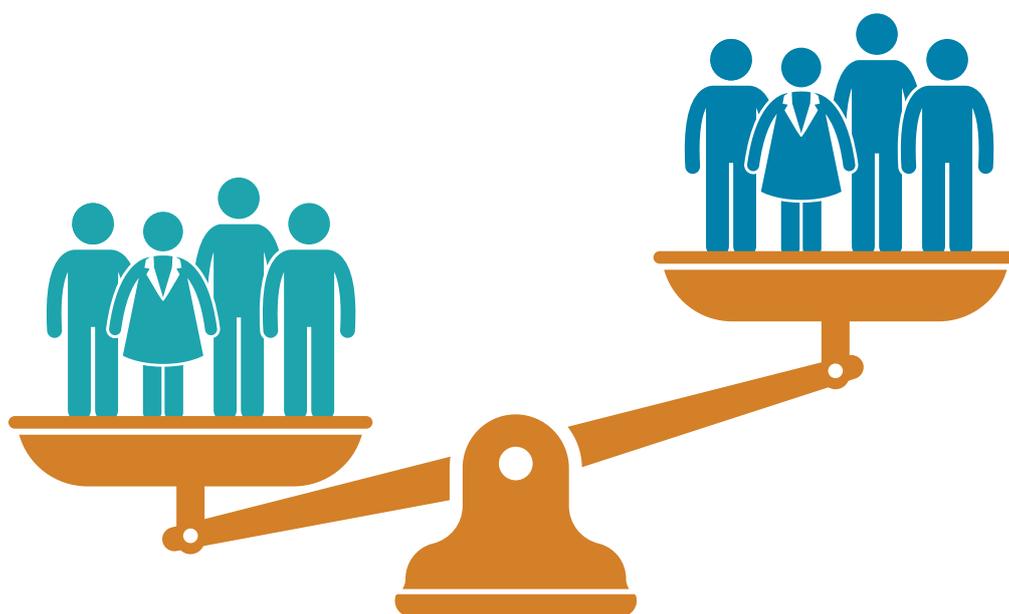
Contacts in the domain of education and training also increased compared to 2018. The most common grounds of discrimination experienced in the school environment was disability (34).

The Ombudsman was contacted because of discrimination most often by people with disabilities and people who had experienced discrimination due to their ethnic origin. Indeed, the number of discrimi-

nation contacts due to disability has grown steadily, while contacts concerning discrimination due to origin have decreased somewhat. Ethnic background has had an established place in the contacts since the times of the Ombudsman for Minorities. The increase in discrimination contacts due to disability, on the other hand, may be affected by the ratification of the Convention on the Rights of Persons with Disabilities and the competence and legal awareness of disability associations. The extension of the powers of the Non-Discrimination Ombudsman at the beginning of 2016 has naturally also had an impact.

Grounds related to disability and health accounted for 31% of all discrimination contacts. Equally, nationality, origin, religion and language often constitute a whole from which one or more individual grounds place the individual at a disadvantage. The combined share of these was 32% of discrimination contacts.

The largest customer group in terms of ethnic background contacting the Ombudsman are still the Roma people, who reported a total of 51 discrimination cases. The contacts by Roma mainly related to discrimination in housing or private services, such as in shopping centres, service stations or restaurants. Only three contacts were recorded for the indigenous Sámi people. The Non-Discrimination Ombudsman aims to focus on raising the awareness of Sámi vic-



Promoting the rights of vulnerable foreign nationals

The duties of the Non-Discrimination Ombudsman include promoting the status and rights of foreign nationals. According to the Government Proposal (HE 19/2014), the Ombudsman's mandate includes monitoring the conditions, status and rights of foreign nationals and ethnic minorities, as well as other groups at risk of discrimination, along with promoting the equality of these groups and preventing discrimination against them.

Furthermore, the Aliens Act gives the Ombudsman the right to be informed of all decisions made by virtue of the Aliens Act, and the right to give statements to the authorities and courts in matters relating to asylum seekers or the deportation of foreign nationals.

The Ombudsman's work related to the status and rights of foreign nationals includes both handling individual contacts and promoting the full realisation of the rights of foreign nationals at a more general level. It is the Ombudsman's aim to promote the realisation of the rights of the most vulnerable foreign nationals. Identifying shortcomings in the legislation and its application is a special duty of the Ombudsman.

THERE HAS BEEN IMPROVEMENT IN THE RIGHTS OF FOREIGN NATIONALS

The current Government Programme contains a large number of items for improving the realisation of foreign nationals' rights. The Non-Discrimination Ombudsman aims to improve the legal protection of asylum seekers by addressing certain issues with their legal protection, especially those resulting from the amendments concerning legal aid made in 2016. Indeed, the need for an amendment to improve the legal protection of asylum seekers is recorded in the Government Programme, which also highlights the importance of safeguarding the realisation of fundamental rights in the asylum process. According to the Programme, the reasonableness of the current standard of proof should also be assessed.

The Ombudsman stresses the importance of family reunification in the lives of recipients of international protection and has proposed the abolition of the income requirement in accordance with the resolution adopted by Parliament on 28 February 2019. The objective was achieved in the Government Programme, which calls for an investigation of the reasonableness of the income limits and abolishing the requirement for means of support from minors. Problems related to family reunification and the realisation of the best interests of the child will also be investigated. The Government Programme also states that the Government will develop legislation and its application practices to promote more flexible access to employment-based residence permits to those who have obtained a negative asylum decision.

Preventing the creation of undocumented foreign nationals through extensive cooperation between authorities, as well as guaranteeing undocumented foreign nationals access to necessary care are also objectives of the Government Programme. Guaranteeing the right to receive indispensable subsistence and care as provided for in section 19 of the Constitution of Finland by an enactment, the necessity of which has also expressed by the Ombudsman, appears to be becoming a reality with a legislative project currently under way.

FINLAND JUDGED BY THE ECHR – OMBUDSMAN'S REPORT RAISED CONCERNS ALREADY THE PREVIOUS YEAR

In its judgment of 14 November 2019, the European Court of Human Rights (ECHR) held that Finland infringed the European Convention on Human Rights in the processing of an asylum application submitted by an Iraqi father. The Finnish Immigration Service (Migri) and the Helsinki Administrative Court considered that the conditions for international protection were not met in the man's case. The Supreme Administrative Court did not grant leave to appeal and the man was returned to Iraq.

According to a 2018 report by the Faculty of Law of the University of Turku, the Åbo Akademi Institute for Human Rights and the Non-Discrimination Ombudsman, Migri's decision practice became much stricter after the increase in the number of asylum seekers, and the stricter practices could not be explained by changes in legislation concerning foreign nationals.

The report found that, in the past, international protection was granted in many decision if it could not be proven that the applicant was not at risk. The burden of proof appeared to have shifted since then, and the arguments put forward by the applicants were not believed as often as before. In addition, previously experienced infringements were no longer considered to constitute a threat of future infringements as in 2015, but were rather assessed as individual events with no connection to future threats.

The report stated that Migri had often used arguments in the vein that the link between the infringement experienced by the applicant or their close relatives and the infringing party identified by the applicant was based on the applicant's own assumptions and that the infringed person had not been

personally profiled in the eyes of any party and was thus not in personal danger. The grounds given by Migri and the administrative court were similar also in the case heard by the ECHR.

After the judgment, the Ombudsman demanded that Finland take concrete measures to ensure that the right to life of any person seeking asylum from Finland is not violated. Among other things, the Ombudsman noted that the asylum processes of certain individuals who have already received a negative decision must be reassessed in the light of the ECHR's judgment. As a result of the judgment, Migri accordingly decided to review some 400 judgments that had already become final. In 10 of these cases, Migri decided to recommend that the applicant awaiting removal seek asylum again due to shortcomings identified in the processing of their application.

Previous reports on asylum issues, the ECHR judgment and the resulting discovery of other incorrectly handled cases have brought the problems in the asylum process clearly to light. Returning home may not be safe even if Finland has found that the applicant is not in need of international protection. In addition to developing the asylum process, the Non-Discrim-



The Ombudsman issued a statement to the Supreme Administrative Court in the case of the right to an extended residence permit of a young person who had come to Finland as a minor, grown up here and become fully integrated into Finnish society. The young Afghan man in question spoke Finnish, was currently studying for a profession and had no social ties to his home country. The Supreme Administrative Court found that even the above-mentioned factors did not suffice to meet the requirements for granting a residence permit under section 52 of the Aliens Act.

The current Government Programme sets a number of commendable goals with the guiding principle of promoting the legalisation of residence when this is both appropriate for Finnish society and humane from the individual's perspective. However, the example of this young Afghan man is but one demonstration that these objectives cannot be achieved without changing the law.

By amending section 52 of the Aliens Act, individual reasons could be better taken into account in the consideration of residence permits. A minor and precisely defined amendment could also ensure that, for example, obtaining an employment-based resi-

dence permit could not be prevented by the applicant's nationality (Aliens Act, section 34). It would also make residence permit processes smoother and more humane if the Act would more precisely define what actions on the part of foreign nationals are actually considered reprehensible (section 36).

The Ombudsman gave a statement to the Supreme Administrative Court in a deportation case concerning a young Afghan man who had lived in Finland for ten years and was well integrated here. Migi and the Administrative Court held that the man should be deported because he had given the authorities incorrect information about his place of residence when applying for citizenship. The provisions on evading the provisions on entry of section 36, subsection 2 of the Aliens Act were applied to the case. The Ombudsman considered that deporting a well-integrated foreign national due to incorrect information on their place of residence given 10 years ago to be unreasonable. In addition, the Ombudsman considered that it was important to refer the matter to the Supreme Administrative Court with regard to the application of the section on evading the provisions on entry. The proceedings are still ongoing.



The current Government Programme sets a number of commendable goals with the guiding principle of promoting the legalisation of residence when this is both appropriate for Finnish society and humane from the individual's perspective.

Work of the National Rapporteur on Trafficking in Human Beings

The Non-Discrimination Ombudsman acts as Finland's National Rapporteur on Trafficking in Human Beings. The Ombudsman monitors the phenomena related to trafficking in human beings and prepares and commissions reports on human trafficking and related phenomena.

It is part of the Ombudsman's mandate to monitor Finland's compliance with international human rights obligations and the effectiveness of the legislation on trafficking in human beings. The Ombudsman can also provide legal advice and, in exceptional cases, assist victims of trafficking in human beings in court. The Ombudsman has extensive rights of access to information as the National Rapporteur on Trafficking in Human Beings.

The objectives of the Rapporteur's work are to promote the identification and assistance of victims of trafficking, the safeguarding of victims' rights, the realisation of criminal liability and the prevention of trafficking in human beings.

10TH ANNIVERSARY OF THE NATIONAL RAP- PORTEUR ON TRAFFICKING IN HUMAN BEINGS: MUCH PROGRESS HAS BEEN ACHIEVED

For the Non-Discrimination Ombudsman as the National Rapporteur on Trafficking in Human Beings, the year 2019 included both appreciation of past successes and anticipation of change in many aspects in the work against human trafficking. The Ombudsman celebrated the 10th anniversary of the National Rapporteur on Trafficking in Human Beings by highlighting success stories from the past decade.

The work to bring the various phenomena to light seems to be having an impact. Parliament discussed the Non-Discrimination Ombudsman's report (C 6/2018, EK 45/2018 vp) in spring 2019. Three out of six points in Parliament's statement on the report concerned trafficking in human beings. Parliament raised the issues of the equality of trafficking victims in access to assistance, weakening the link between assistance and the criminal process, mak-

- Many of the victims are unfamiliar with the concept of human trafficking, but they talk about how their dreams have been crushed and how their vulnerability has been exploited for the sake of self-interest.

Mikaela Goad, Social Worker

ing assistance more victim-oriented, reviewing the grounds for granting residence permits to trafficking victims, and the possibility of extending the competence of the occupational safety and health authorities over trafficking offences.

These opinions are also reflected in the Government Programme. The Government Programme has set the objectives of improving the status of trafficking victims regardless of the progress of criminal proceedings, and updating the Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings to weaken the link to the criminal process in accordance with international obligations. An Act on assisting victims of human trafficking will be passed and the necessary references to victims of trafficking will be added to the social and health care legislation. Furthermore, a specialized police unit will be established for the detection and investigation of trafficking offences. A Government coordinator for the fight against human trafficking has already been appointed to the Ministry of Justice in accordance with the Government Programme. Only the grounds for residence permits were not mentioned in Parliament's statements.

In the summer, the Parliamentary Ombudsman gave a decision that supports both the position of trafficking victims as recipients of special services and the need to reform the legislation on assistance. The Non-Discrimination Ombudsman has taken the view that anti-trafficking activities should be reformed to give victims equal access to assistance everywhere in Finland, and that safe housing for victims of trafficking should be organised and provided for by law – the latter point is also part of the Government Programme. It would also be essential to view assisting the victims of trafficking as an integral whole and prevent re-victimisation effectively.

The role of National Rapporteur on Trafficking in Human Beings was instituted to monitor trafficking in human beings and related phenomena in 2009. The establishment of the Rapporteur was based on the idea that anti-trafficking activities would benefit from external monitoring and evaluation, as well as from development proposals based on these analyses. It was also thought that the Rapporteur could bring the issue of trafficking in human beings into the political and public debate, which was estimated to contribute to the work against trafficking in human beings. The objectives of the Rapporteur's work are ultimately to

promote the identification and assistance of victims of trafficking, the safeguarding of victims' rights, the realisation of criminal liability and the prevention of trafficking in human beings.

The year 2019 was the tenth anniversary of the National Rapporteur on Trafficking in Human Beings. The Rapporteur's long-term, goal-oriented advocacy, including reports, statements and training, has achieved results. There has been a visible, permanent change in Finland's activities against trafficking in human beings in cooperation with other anti-trafficking operators.

In honour of the anniversary, the Non-Discrimination Ombudsman published stories about the work against trafficking in human beings in the form of a blog. The blog wanted to draw attention to and thank the people working against trafficking in human beings, thanks to whom so much progress has been made in the fight against trafficking in human beings.

A decade ago, trafficking in human beings was a practically unknown phenomenon to the public and in the systems of the authorities, even though studies had found that trafficking was also happening in

- Human trafficking is a story about a world which most of us never see – which is probably a good thing. It is a story about attempts to obtain financial gain, cruelty, violence and exploitation of people in a vulnerable position. Human trafficking is abhorrent, and it creates disbelief and hopelessness. When hearing about human trafficking, many people ask: how can this be possible and can this be true, in Finland?"

Venla Roth

Finland. The international pressure to address this had also grown. The first report of the National Rapporteur on Trafficking in Human Beings to Parliament stated that criminal liability was not being realised in cases of trafficking in human beings, and the rights of victims were hardly ever fulfilled. The report brought trafficking in human beings into the public and political debate. The stories now published give an idea of what the various anti-trafficking professionals have done and what concrete changes have been achieved. The stories describe helping victims of sexual violence, forced labour and forced marriages, the realisation of criminal liability, cooperation between authorities and NGOs, and the importance of understanding the dynamics of trafficking in human beings.

Cooperation between different actors became a key theme in the compilation of stories. Cooperation enables successful action to combat trafficking in human beings, effective assistance to victims and an effective criminal process. Cooperation is necessary, as the same person may need specialised skills in areas such as social work, the criminal procedure

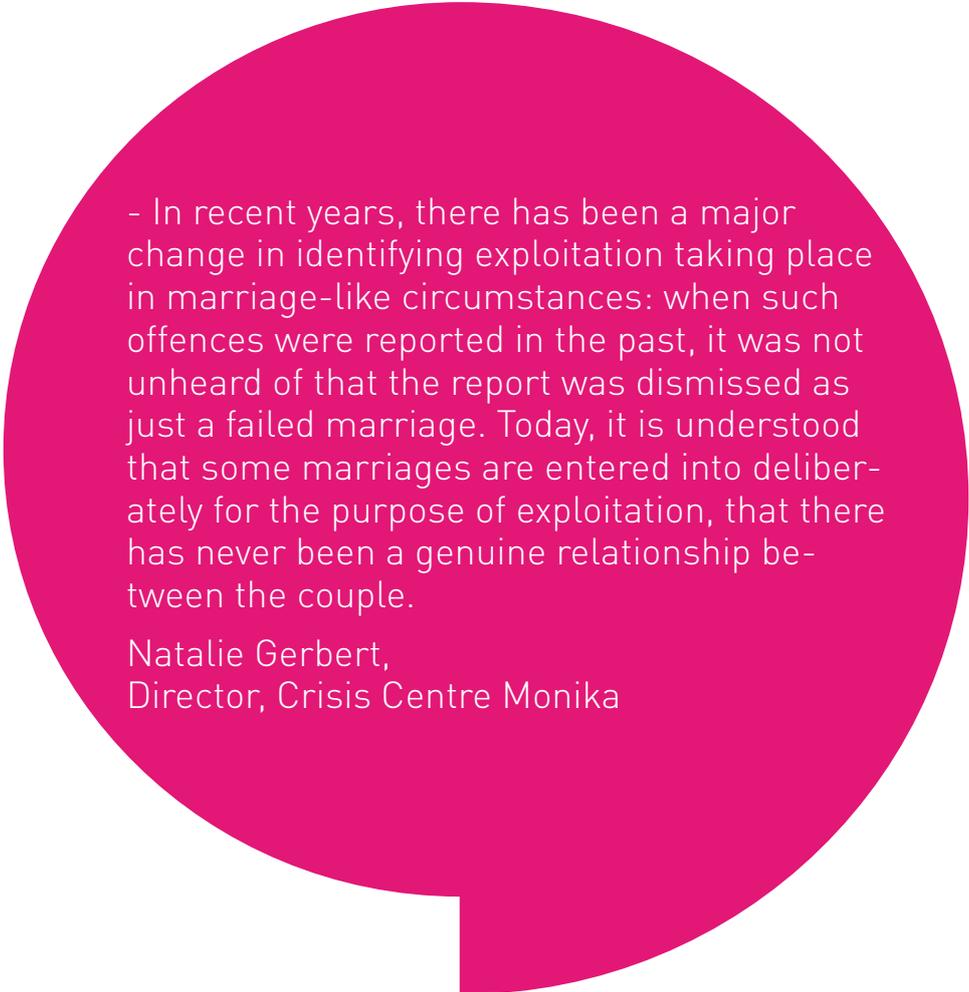
and residence permit status. Trust between operators is required, and the victim must also be able to rely on the operators and their competence. Understanding and identifying the many forms of trafficking in human beings has made it possible to help more victims.

The stories are available at www.syrjinta.fi/en/stories-about-the-work-against-trafficking-in-human-beings

PARLIAMENTARY OMBUDSMAN'S DECISION GUIDES MUNICIPALITIES IN PROVIDING ASSISTANCE TO VICTIMS OF HUMAN TRAFFICKING

In Finland, responsibility for organising assistance for victims of trafficking in human beings has been split between two authorities. According to the Act on the Reception¹ of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings ("Assistance Act"), the municipality of residence is responsible for arranging assistance for victims re-

¹ Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings 746/2011, section 38b.



- In recent years, there has been a major change in identifying exploitation taking place in marriage-like circumstances: when such offences were reported in the past, it was not unheard of that the report was dismissed as just a failed marriage. Today, it is understood that some marriages are entered into deliberately for the purpose of exploitation, that there has never been a genuine relationship between the couple.

Natalie Gerbert,
Director, Crisis Centre Monika

siding in Finland. Other victims are assisted by the assistance system for victims of trafficking in human beings (Joutseno Reception Centre). Both parties can organise the assistance activities themselves, for example as normal municipal services, or purchase them from a public or private service provider. By law, assistance measures for trafficking victims must be arranged on the basis of an assessment of the victim's individual support needs.

Over the years, the National Rapporteur on Trafficking in Human Beings has drawn attention to the fact that the double model for obtaining services in Finland is regrettably poor in serving victims, especially those who have a municipality of residence in Finland. The Rapporteur has gotten the impression that municipalities have little knowledge of their obligations to organise or acquire services and support measures for victims of trafficking in human beings.

COMPLAINT TO THE PARLIAMENTARY OMBUDSMAN

A request for advice under criminal law was made to the National Rapporteur on Trafficking In Human Beings in 2015 regarding a case of trafficking in hu-

man beings related to sexual exploitation in Finland. The case concerned a young woman from the majority population who had been subjected to aggravated sexual abuse and trafficking for sexual exploitation in Finland at the age of 14–17. The case was one of the most serious in Finnish history in terms of sentencing, the aggravated nature of the exploitation and the injuries suffered by the defendant.

In addition to the criminal process, the Rapporteur also followed the case in terms of the realisation of the victim's rights under the Assistance Act. The Rapporteur got the impression that the support received by the client was insufficient in many respects. The client's need for support was extensive: for example, she needed help to file a social assistance application, medical services, a support person, therapy and help for coping with everyday life. Several authorities had raised the need for support services with the municipal authorities on a number of occasions, but the municipality had not taken sufficient steps to arrange support for the client. As a result, the Rapporteur submitted the matter to the Parliamentary Ombudsman for evaluation in 2017. The Rapporteur

- Human trafficking that involves sexual exploitation is an issue that must be solved by society. At times, you may ask whether there is a type of offence that exists in name but is not punished? Human trafficking is organised crime and it is very profitable. The risk of being caught is small and the consequences are minor – for example, the sentence for serious cases of procuring is only one to two years imprisonment

Kenneth Eriksson, Detective Sergeant

man beings must not be linked to criminal proceedings. The victim must be provided with appropriate assistance immediately when their possible victimisation has become known to the authorities. Assistance must not depend, for example on the stage of the criminal proceedings or the decision of the district court. The National Rapporteur on Trafficking in Human Beings has drawn attention to the connection with criminal proceedings and considers the position taken by the Parliamentary Ombudsman to be an important policy statement. In the Rapporteur's opinion, assistance should be developed in accordance with the Parliamentary Ombudsman's decision and access to assistance should be decoupled from the criminal process.

GROWTH OF LABOUR EXPLOITATION INCREASES RISK OF HUMAN TRAFFICKING

Over the past few years, the National Rapporteur on Trafficking in Human Beings has drawn attention to the increasing signals indicating a growth in labour exploitation. The Rapporteur discussed the matter with various parties in 2019. On the basis of these discussions with experts, it can be concluded that Finland already has a differentiated labour market and, in certain sectors, the exploitation of labour is a rule rather than the exception.

Exploitation takes various forms and is often not detected by the authorities. The insignificance of sanc-

tions and rarity of sentences in relation to the benefits makes labour exploitation profitable. At-risk sectors include many low-wage sectors, such as the restaurant industry, cleaning, barbers and hairdressers, car washes and other service sectors. Long subcontracting chains make it difficult for the customer to know the situation and conditions of those doing the actual work. The platform economy has created new forms of work that also enable the exploitation of individuals. A person may involuntarily or unknowingly be an entrepreneur, but one who is highly dependent on the contractor.

Foreign workers, especially in low-wage and labour-intensive sectors, can be vulnerable for a number of reasons. They may lack language skills and knowledge of collective agreements or the law. They do not have social networks and can live in accommodations arranged by the employer. Workers can fear retaliation if they do not agree to demands, and it is not easy to change jobs since employers in a particular sector often know each other. Employees may be indebted and dependent on the employer already upon arrival in Finland. In addition, hopes for family reunification can keep employees dependent on their employer and (nominal) wages.

Asylum seekers and those staying in Finland without a residence permit are particularly vulnerable, since a job can mean the possibility of legalising their residence, at any cost. On the other hand, any work under any conditions can be the only way for a person without a residence permit to survive.

The number of people seeking assistance from NGOs and the assistance system for victims of trafficking in human beings has increased. It can be seen as a positive development indicating that at-risk groups are aware of, for example NGOs that can help them. However, reporting an offence and consequently losing their job can also be a personal risk for the victims of labour exploitation. Investigating labour exploitation is challenging and requires special expertise. Obtaining evidence can also be a challenge: the company may not keep rosters, individuals are not officially on the payroll, or the paperwork is seemingly in order.

Section 52a of the Aliens Act gives victims of trafficking in human beings the right to a temporary residence permit if residence in Finland is justified by

-It can take time for the assistant, police and other sources of assistance to win the trust of victims of human trafficking, and enough time should be given for the process. The success of the criminal proceedings is of great importance for the victim's recovery

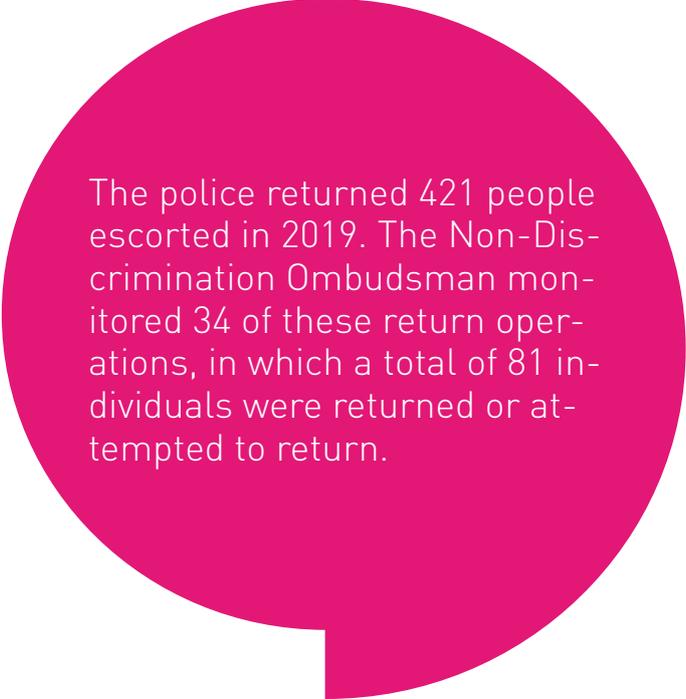
Emilia Kaikkonen,
Attorney-at-Law

Monitoring the enforcement of removals from the country

The police returned 421 people escorted in 2019. The Non-Discrimination Ombudsman monitored 34 of these return operations, in which a total of 81 individuals were returned or attempted to return. Monitoring focused on the return of vulnerable persons, such as mentally or physically ill, victims of trafficking in human beings and families with children, to Europe and third countries. Challenging return countries such as Afghanistan, Iran and Somalia were also selected for enhanced monitoring. Such returns are a subject of much public interest, and the Non-Discrimination Ombudsman is regularly contacted with concerns about such returns. According to the observations made in the course of monitoring, people being returned to these countries often also resist their return, which may require the police to use force during the return operation. In 2019, monitoring drew attention to the return of vulnerable people from Finland, especially to southern European countries. The returnees were victims of human trafficking who suffered from physical or mental illnesses or injuries. Returnees in this group often had protected status or, for example, a residence permit based on family ties in another Member State.

The Non-Discrimination Ombudsman's overall opinion of the operational activities of the police in the enforcement of the returns in 2019 was a positive. The needs of the returnees were taken into account well, the treatment of children was good, and the escort officers conducted themselves appropriately and with professionalism. The Ombudsman considers it important that return journeys were accompanied by a health care professional when necessary and that the gender of the returnees was taken into account in the choice of escort officers.

The monitors also drew attention to the duty of the police to accept asylum applications and the possibility of monitors to observe all situations during returns. Monitoring identified problems related to the exchange of information between authorities, which



The police returned 421 people escorted in 2019. The Non-Discrimination Ombudsman monitored 34 of these return operations, in which a total of 81 individuals were returned or attempted to return.

both hampers the work of the escort officers and exposes returnees to infringements of their legal protection. The challenges in the exchange of information were partly caused by technical IT issues. As a result, the Non-Discrimination Ombudsman issued a recommendation concerning the exchange of information to Migri and the police in early 2020.

As a rule, escort Officers cooperated with the monitors in an open and constructive manner. There were nevertheless some challenges, such as in the timeliness and content of the announcements of upcoming returns to the Non-Discrimination Ombudsman.

COMMUNICATIONS TO THE PARLIAMENTARY OMBUDSMAN

In 2019, the Non-Discrimination Ombudsman asked the Parliamentary Ombudsman to assess the correctness of the enforcement of one removal from the country. The case concerned an internal flight decision made by the Finnish Immigration Service, in which the returnee's return to their home in the country's capital was not considered possible, but it was deemed that the returnee could live

SEPARATION OF MOTHER AND CHILD

The Parliamentary Ombudsman ruled that the asylum matters of children and their parents are normally processed together in Finland and their application for international protection is decided with a single decision. The mother's and child's asylum applications were also processed together by both the Finnish Immigration Service and the Administrative Court in this case. However, the police separated the mother and the child into separate processes for the enforcement of the preventive measure. In the case of the mother, the police issued a detention decision and informed the social welfare authorities of the matter, and the child was urgently placed in a child welfare institution.

The separation of a parent from a child under school age is a decision that interferes profoundly with fundamental rights and the rights of the child. Separating a child from their parent may have far-reaching effects on the child. Separating children from their parents should only be a last recourse when the child is at risk of immediate harm or the measure is otherwise unavoidable. According to the Parliamentary Ombudsman's assessment, the matter was handled incorrectly when the interests of the child were not assessed in connection with the enforced detention of the parent.

Children are always especially vulnerable as asylum seekers, which gives cause for the special protection of children. Their vulnerability must be taken into account when assessing detention and the enforcement of refusal of entry. The priority of the best interests of the child and the protection of the family connection between the parent and the child must be the starting point in all police decisions on collecting the family and preventive measures during the enforcement stage. The Parliamentary Deputy-Ombudsman drew particular attention to the fact that the separation of the mother and child or the separation's necessity and conformity with the best interests of the child were not assessed in the detention decisions made by the police and court. It was only when the mother and daughter could be placed together in the detention unit that the child's best interests began to be mentioned in the decisions.

Even though the police had a legal obligation to take



Children are always especially vulnerable as asylum seekers, which gives cause for the special protection of children.

action regarding the enforcement, it was the Parliamentary Ombudsman's view that another course of action could have been chosen that would have better respected the rights of the vulnerable single parent and her child, while still advancing the enforcement process. The mother and child were being removed to another EU Member State, so the enforcement arrangements could not be considered particularly complex or time-consuming.

The police report does not provide any acceptable justification for collecting a vulnerable single parent with a six-year-old child, even though there were no suitable accommodations for them in detention units. In the opinion of the Parliamentary Ombudsman, if detention was necessary, the police should only have collected the mother and child when there was a vacancy in a detention unit suitable for vulnerable persons and families with children. This would have both secured the enforcement and taken into account the needs of the single-parent family, and the best interests of the child in particular. Above all, there was no need to separate the child from her mother.

The Parliamentary Deputy-Ombudsman does not consider it acceptable that the rights of the child are not fulfilled because there is no room in the detention unit. Taking the rights of the child and the spe-

cial needs of vulnerable groups into account also requires specific action by the police at the enforcement stage. In the view of the Parliamentary Deputy-Ombudsman, the enforcement guidelines in the police regulation on refusal of entry and deportation (POL- 2018-24625) do not sufficiently address the significance of the priority of vulnerability and the interests of the child to the decisions made in the enforcement stage.

BEST INTERESTS OF THE CHILD

Several directives and the Charter of Fundamental Rights of the European Union require taking into account and prioritising the best interests of the child. Section 6 of the Aliens Act provides for the application of the Act to minors. According to the section, special attention must be paid to the best interest of the child and to circumstances related to the child's development and health in any decisions taken under the Aliens Act that concern a child under eighteen years of age.

According to Article 3(1) of the Convention on the Rights of the Child, the best interests of the child must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Under Article 9 of the same Convention, States Parties must ensure that a child is not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

The UN Committee on the Rights of the Child oversees the Convention on the Rights of the Child and directs its interpretation with its General Comments. Assessing and determining the best interests of the child is necessary in situations in which the child may be separated from their parents. The Committee on the Rights of the Child has on several occasions stressed the unconditional nature of assessing the best interests of the child: The Article leaves no discretion to the States Parties in the matter. According to the Committee, all administrative authorities, including the immigration authorities, must assess the best interests of the child in each deci-

sion, and their decisions and enforcement measures alike must be guided by the best interests of the child. Because being separated from their parents has a far-reaching impact on children, separating them from their parents should only be a last recourse when the child is at risk of immediate harm or the measure is otherwise unavoidable.

AMIF-PROJECT - EFFECTIVENESS OF MONITORING REMOVALS FROM THE COUNTRY

The Non-Discrimination Ombudsman has been tasked with monitoring the enforcement of removals from the country since 2014. A total of 189 return operations have been monitored over these past six years. In an ongoing project (funded by the Asylum, Migration and Integration Fund of the European Union's Home Affairs Funds), the Non-Discrimination Ombudsman assesses each monitoring operation carried out in 2014–2019 and makes recommendations for the improvement of transparency and respect for the returnees' fundamental and human rights in enforced removals. The project will also produce proposals and measures to develop monitoring and, in particular, improve its effectiveness. Effectiveness will also be improved through the development of internal and external communications. The European Union aims to increase returns, which emphasises the importance of monitoring and the need for cooperation between Member States. Furthermore, the Non-Discrimination Ombudsman's development project intensifies cooperation with the monitoring organisations of Frontex and other Member States in order to reinforce Finland's national monitoring and its effectiveness in line with the EU's goals.

EUROPEAN COOPERATION IN THE MONITORING OF ENFORCED REMOVALS CONSOLIDATES FUNDAMENTAL RIGHTS

The Non-Discrimination Ombudsman as part of Frontex's pool of monitors

The Return Directive (2008/115/EC) obliges Member States of the European Union to monitor returns effectively. More detailed provisions on the monitoring of enforced removals have been issued in Regulations of the European Parliament and of the Coun-

several other countries have set up a working group with the support of the Council of Europe to plan functions for strengthening the independence of the monitor pool and consolidating its role outside the enforcement of returns. The primary purpose of this is to ensure the fulfilment of the returnees' rights.

Monitoring is based on a common European framework, standards, good practices and uniform proce-

dures. Familiarity with common European practices is important when participating in joint returns, but international cooperation also establishes direct contacts with the supervisory organisations of other countries. Monitors have the opportunity to observe best practices in other countries and disseminate them in connection with the development of national return activities and monitoring.

According to the provision, the participating Member States and the Agency must ensure that the respect for fundamental rights, the principle of non-refoulement, the proportionate use of means of constraints and the dignity of the returnee are guaranteed during the entire return operation.



TOGETHER
for non-discrimination!



Staff of the Office of the Non-Discrimination Ombudsman

The following people have worked at the Office of the Non-Discrimination Ombudsman in 2019, either in permanent positions, in temporary positions, or as trainees.

Senior Adviser [Robin Harms](#)
Head of Office [Rainer Hiltunen](#)
Non-Discrimination Ombudsman [Kirsi Pimiä](#)

Executive Assistant [Miia Mäkelä](#)
Trainee [Elsa Korkman](#)
Trainee [Soile Heikkilä](#)
Department Secretary [Elena Leinonen](#)
Planning Officer [Massimo Zanasi](#)
Officer [Merilii Mykkänen](#)
Officer [Päivi Al-Tameemi](#)
Officer [Toni Tuomi](#)
Officer [Vinh Panh](#)
Communications Officer [Mirka Mokko](#)
Communications Trainee [Anni Kyröläinen](#)
Communications Trainee [Katariina Saikku](#)
Communications Trainee [Petteri Keränen](#)
Communications Manager [Maria Swanljung](#)
Senior Officer [Aija Salo](#)
Senior Officer [Anni Valovirta](#)
Senior Officer [Joonas Rundgren](#)
Senior Officer [Jussi Aaltonen](#)
Senior Officer [Katri Linna](#)
Senior Officer [Matti Jutila](#)
Senior Officer [Maija Koskenoja](#)
Senior Officer [Merja Nuutinen](#)
Senior Officer [Michaela Moua](#)
Senior Officer [Pamela Sarasmo](#)
Senior Officer [Pirjo Kruskopf](#)
Senior Officer [Päivi Keskitalo](#)
Senior Officer [Venla Roth](#)
Senior Officer [Tiina Valonen](#)

