



**THE NON-DISCRIMINATION
OMBUDSMAN'S**

ANNUAL REPORT
2018



The year 2018 was an extraordinarily busy one for our office. Writing the report of the Non-Discrimination Ombudsman to the Parliament demanded a lot from us, but a lot has happened in addition to it. We took part in many events and ran a successful campaign together with the Centre for Human Rights to improve the employment of persons with disabilities. Our whole personnel deserves a lot of thanks for the work they have done! Our job is not always easy, but we do our best.

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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 other 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 and the Act on the Non-Discrimination Ombudsman.

The most important tool in the work of the Non-Discrimination Ombudsman is the Non-Discrimination Act, which was updated on January 1, 2015.

Discrimination based on gender or gender identity is the purview of the Ombudsman for Equality.

The Non-Discrimination Ombudsman is under the jurisdiction of the Ministry of Justice.

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Foreword for annual report 2018



2018 was the year of the report of the Non-Discrimination Ombudsman to the Parliament. We spent the first months of the year finalising the report and handed it to the Speaker of Parliament in April. The report committee comprised the Employment and Equality Committee, and comments were also requested from the Legal Affairs Committee, the Administration Committee, and the Social Affairs and Health Committee. The report was an extensive review of our work under the new Non-Discrimination Act, namely the past three years. The report also contained an analysis of the functionality of the Non-Discrimination Act. For this reason, an analysis will not be included in this annual report, but focus is given to various successful projects realised during 2018. The cases of discrimination discussed in this report were solved through interpretations of the Non-Discrimination Act both in the National Non-Discrimination and Equality Tribunal and in the courts. In cases related to foreign nationals and human trafficking, the new strategy was used to focus more on structural factors. Monitoring removals from the country required more resources than ever before.

As the name suggests, the report to the Parliament is naturally directed at the Parliament, but we also utilised the report extensively in our influencing work. The report provides our interest groups with a general view of the kinds of cases the Non-discrimination Ombudsman works with and therefore of the different kinds of discrimination coming to our attention. The report was useful in training events focusing on the Non-Discrimination Act, and, first and foremost, it highlighted shortcomings in the treatment of asylum seekers as well as the realisation of the rights of the victims of human trafficking. We were also able to use the report and the materials within it internationally, especially when meeting with international supervisory bodies, such as the Council of Europe.

On March 1, 2019, the Parliament approved a statement containing six resolutions related to our report (based on a report by the Employment and Equality Committee) with a vote of 162 for and 14 against. Somewhat surprisingly, the strongest support was giv-

en to our recommendation that the income requirement should not be applied to the family reunification applications of people with refugee or subsidiary protection status. The new Government is tasked with preparing the necessary changes in legislation. Overall, our recommendations received strong support. The Parliament's statements show that our work is valued, and our strategy and rulings are well received.

The statements of the committees gave us a good basis to plan our objectives regarding the changes and improvements required for the Government Programme in terms of strengthening human rights in the Finnish society. In addition to the recommendations of the report, we wish for the Government to implement an anti-racism cross-administrative action plan as well as take concrete steps to improve accessibility and the realisation of the rights of persons with disabilities. Now we are waiting to see what kind of a programme the Government is building our future on.

The year 2018 was an extraordinarily busy one for our office. Writing the report to the Parliament demanded a lot from us, but a lot has happened in addition to it. We took part in many events and ran a successful campaign together with the Centre for Human Rights to improve the employment of persons with disabilities. Our whole personnel deserves a lot of thanks for the work they have done! Our job is not always easy, but we do our best.

Kirsi Pimiä

Non-Discrimination Ombudsman

HEARING OF THE NON-DISCRIMINATION OMBUDSMAN IN COURT

In legal issues concerning the application of the Non-Discrimination Act, the Ombudsman must be reserved an opportunity to be heard under Section 27 of the Non-Discrimination Act. These statements are often related to the interpretation of non-discrimination legislation. The Ombudsman has also used her right to issue a statement in legal cases, where the aim has been to promote equality on a more extensive scale, in addition to the individual case. In statements submitted to courts and prosecutors, the Non-Discrimination Ombudsman has also paid attention to the amount of compensation provided in the Non-Discrimination Act. In previous case law, the legal consequences have not always been sufficiently effective, proportionate and cautionary. There is little established case law on the current Non-Discrimination Act, but expectations concerning effective implications are high.

In 2018, the Ombudsman gave a total of 24 statements for prosecutors and courts in accordance with Section 27 of the Non-Discrimination Act. Out of these statements, 12 were given to prosecutors, 3 to district courts, 5 to administrative courts, and 4 to the Supreme Administrative Court.

Section 27 Hearing of the Non-Discrimination Ombudsman

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

The Non-Discrimination Ombudsman was heard at the Supreme Administrative Court in a case concerning a primary school student attending school in a rehabilitative group for people with developmental delays and mental disabilities and the student's right to expense-free school transport even when the school day is interrupted due to reasons pertaining to the student. In a previous decision, the Administrative Court had stated that equal treatment or prohibition of discrimination had not been violated in the case, and that the Ombudsman did not need to be reserved an opportunity to be heard. The Ombudsman brought to the Supreme Administrative Court's attention that, in this particular case, in addition to the Basic Education Act, the Non-Discrimination Act must also be applied, in particular Section 15 of the Act, which obligates an education provider to make the due and appropriate adjustments necessary in each situation for a person with disabilities to be able, equally with others, to gain access to education.

The Non-Discrimination Ombudsman was heard at the Administrative Court of Eastern Finland in a case concerning the evaluation of whether discrimination had occurred when a university had not permitted a person, as a special arrangement, the right to complete part of a traineeship required for the degree at the person's place of residence rather than the place of study. The Ombudsman brought to the Administrative Court's attention the university's obligation to promote equality and carry out reasonable adjustments requested by the disabled with disabilities.



organised racism and hate speech is important to avoid spreading the view that such action would be accepted.

Due to the nature of structural discrimination and racism, non-discrimination legislation and criminal legislation often has very little impact on their emergence. However, equality planning in accordance with the Non-Discrimination Act provides a good method for organisations to contemplate efficient means of weeding out harassment and hate speech as well as achieving an operational culture with a positive atmosphere towards diversity.

THE NEXT GOVERNMENT SHOULD DRAW UP AN ANTI-RACISM ACTION PLAN

Combating racism requires efficient, multisectoral, long-term action – single or scattered projects in different sectors are not enough. Finland needs an action plan against racism and hate crimes.

The Against Hate project of the Ministry of Justice, in which the Non-Discrimination Ombudsman also participated in 2018, mapped the actions taken against hate crimes and hate speech in various sectors. The project mapped the shortcomings of current operations and the need for a national action plan. The results of the Against Hate project as well as those of the project against hate speech conducted by the Ministry of the Interior, the Ministry of Justice and the Ministry of Education and Culture since 2018, among others, should be used in selecting the focal points and procedures for the national anti-racism action plan. In Sweden, a national anti-racism action plan with priority actions was already published at the end of 2016.

Procedures should, in particular, be directed at young people and those working with young people. It is especially important to invest in preventive measures against racist bullying and harassment at schools and educational establishments as well as methods for handling incidents. In the report submitted to the Parliament in 2018, the Non-Discrimination Ombudsman recommends that amendments be made to the Non-Discrimination Act in order for the law to define action on the part of educational establishments as discrimination if the educational establishment does not take action when a pupil or student is harassed.



Finland needs an action plan against racism and hate crimes.

Preventive measures against discrimination in recruitment processes should also be made more efficient and, if necessary, more training should be provided for people working in recruitment.

ACTION PLAN:

- Efficient enforcement of legislation must be ensured: defamation and ethnic agitation motivated by hatred must be investigated, and the perpetrators must be prosecuted efficiently. The prohibition of harassment included in the Non-Discrimination Act must be utilised more efficiently as a tool for combating hate speech.
- The recommendations of the ministries' joint hate speech committee, led by Archbishop Emeritus Kari Mäkinen, should be acted upon.
- The politics of good population-wide relations should be enforced in all sectors to ensure a feeling of solidarity, involvement, and security across the population.
- The obstacles for immigrants and speakers of foreign languages to participate in and influence society should be reduced.
- Efficient means for combating racism and hate speech and for promoting equality especially in schools and educational establishments should be ensured.



PUBLICLY DISPLAYING THE NAZI SWASTIKA FLAG IS ILLEGAL

In recent years, the societal atmosphere in Finland has become more strained. Racism manifests as hate speech online and as slurs in the public. Hate speech and hate crimes are often directed at members of minority groups. One unfortunate example of this is hatred towards the Jewish community.

The swastika flag represents Nazi Germany, which systematically questioned and violated the human dignity and right to life of various minority groups, including those of Jewish faith. The swastika flag is commonly linked to the persecution of and hatred towards Jewish people in Nazi Germany. On Independence Day, a swastika flag was seen on the streets of Helsinki. Flying the flag offended the limits of acceptable behaviour, and it violated the dignity and sense of security of many people.

That's enough! In its ruling, the National Non-Discrimination and Equality Tribunal has stated that displaying the swastika flag constitutes a violation of the Non-Discrimination Act. This ruling is from a couple of years ago, when a person had placed a swastika flag in the window of their home. The Tribunal's ruling is significant in defining a principle at a time when hate speech and an atmosphere of hatred and humiliation seems to be increasing. With this ruling, we can state that displaying the swastika flag is illegal. The ruling is a continuation on legal decisions that remind us that the freedom of speech has its limits and that everyone is responsible for what they say. For example, in a historical or artistic context, the use of the swastika flag may still be justified.

Studies show that hate speech and hate crimes have increased in Finland during recent years. However, the methods and the will to fight hate speech have also improved. There are numerous legal provisions that can be used to intervene when hate speech occurs and thus create a more positive atmosphere in terms of human rights. The ruling of the National Non-Discrimination and Equality Tribunal is a clear example of the functionality of the Non-Discrimination Act's section on harassment. There is very little case law on harassment as of yet, but the Act is a good tool for combating racism and hate speech.

Despite clear signs that racism, hatred, and a tense atmosphere in Finland are indeed a reality, some positive developments can also be seen. The Tribunal's ruling, together with the decision to disband the Nordic Resistance Movement and the convictions linked to the MV magazine, show that Finland is not willing to accept human rights violations in the name of freedom of speech. By confiscating a swastika flag on Independence Day, the police also expressed that these flags are not welcome in Finnish streets.

SECTION 14 OF THE NON-DISCRIMINATION ACT

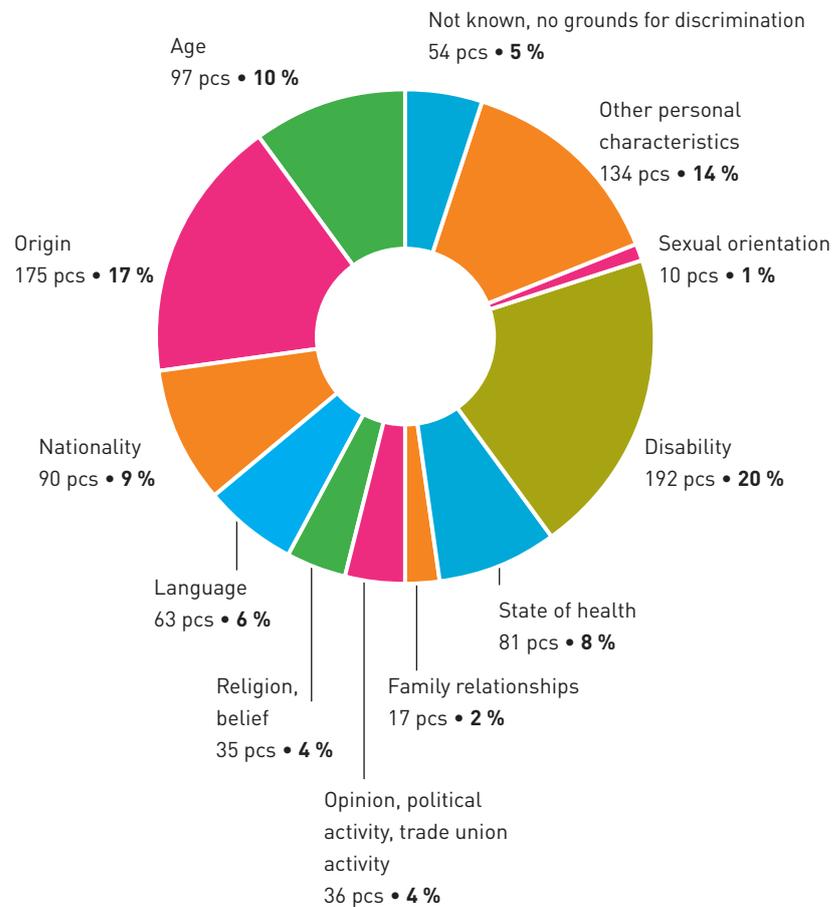
The deliberate or de facto infringement of the dignity of a person is harassment, if the infringing behaviour relates to a reason referred to in section 8(1), and as a result of the reason, a degrading or humiliating, intimidating, hostile or offensive environment towards the person is created by the behaviour.

The Non-Discrimination Ombudsman was heard at the Prosecutor's Office of Western Uusimaa in a case concerning an officer in charge of an investigation having proposed to the prosecutor that the preliminary investigation be restricted in a case where the members of a Roma family had experienced discrimination in a restaurant due to their origin. The officer in charge of the investigation had proposed to the prosecutor that the preliminary investigation be stopped because the parties had reached an agreement. The Ombudsman brought to the prosecutor's attention that denying service based on origin is, in principle, a case of severe discrimination. In addition, the Ombudsman found that the officer in charge of the investigation, before proposing such a procedure, and the prosecutor before accepting it, should make sure that the victims of discrimination have been made aware of their rights, including the prevailing level of compensation and damages in case law. The Ombudsman stated that a mere apology and a meagre monetary compensation do not fulfil the requirements of EU directives that govern Finnish case law. Finally, the Ombudsman stated that the Office is, if necessary, ready to take action in accordance with Section 19 of the Non-Discrimination Act to facilitate agreement between the parties.

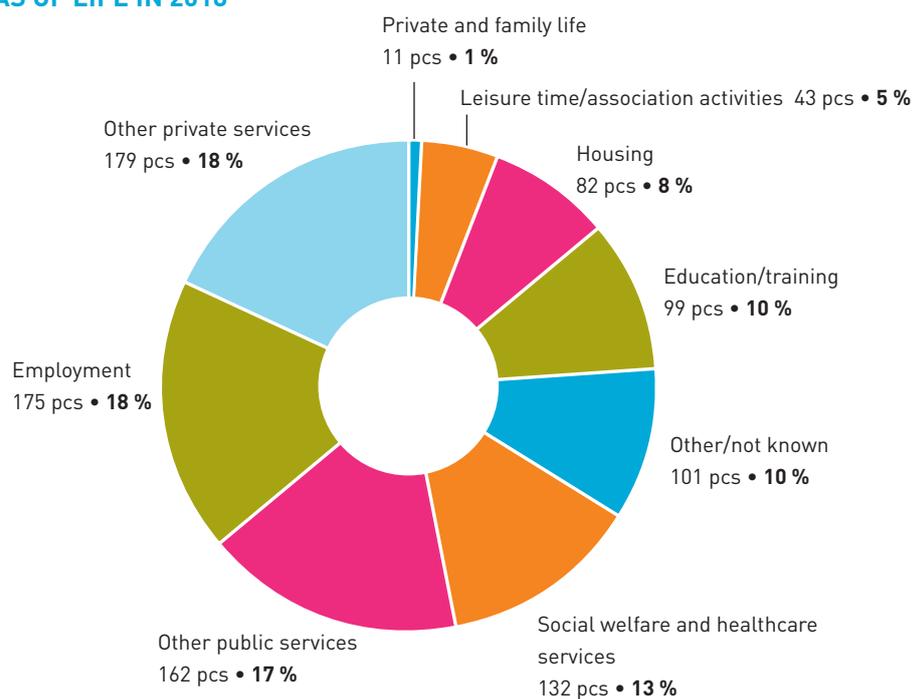
The Non-Discrimination Ombudsman was heard at the Prosecutor's Office of Helsinki and gave a statement in the Court of Appeal proceedings of a criminal case concerning the denial of service in a shop based on the customer's religion. The District Court had issued a fine for the shop owner for refusing service to a woman wearing a niqab, which covers the whole face except for the eyes. In District Court, the shop owner appealed to the grounds that it is important, when necessary, to be able to identify a customer from security camera footage. The Ombudsman stated that, based on the materials provided in the court proceedings and the preliminary investigation, the situation did not provide any reason to suspect disruptive behaviour or intention of theft, and the defendant had provided reasons that were related to only the general upholding of security, drawing a parallel with the woman's niqab and a disguise. The Ombudsman stated that, with particular attention paid to Section 11 of the Constitution of Finland on the freedom of religion, regardless of whether the court believes that the shop owner had acceptable grounds for their actions, the means used were clearly disproportionate and had led to unreasonable and thus discriminating treatment of the woman based on her religion.



DISCRIMINATION CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN IN 2018 ACCORDING TO THE GROUNDS FOR DISCRIMINATION



CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN ACCORDING TO THE DIFFERENT AREAS OF LIFE IN 2018





TOGETHER
for non-discrimination!



NON-DISCRIMINATION

OMBUDSMAN

YHDENVERTAISUUSVALTUUTETTU
DISKRIMINERINGSOMBUDSMANNEN
OVTTAVEARDÁSAŠVUOĐAÁITTARDEADDJI