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

2018

FINLAND

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

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

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

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

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

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

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

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



Kirsi Pimiä
Non-Discrimination Ombudsman

1. Introduction

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

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

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

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

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

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

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

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948

ARTICLE 1:

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

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

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

1.2. PROGRESS TOWARDS FULL ENFORCEMENT OF HUMAN RIGHTS

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

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

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

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

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

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

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

1.4. VULNERABILITY IS CREATED AND PREVENTED WITH STRUCTURES

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

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

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

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

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

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

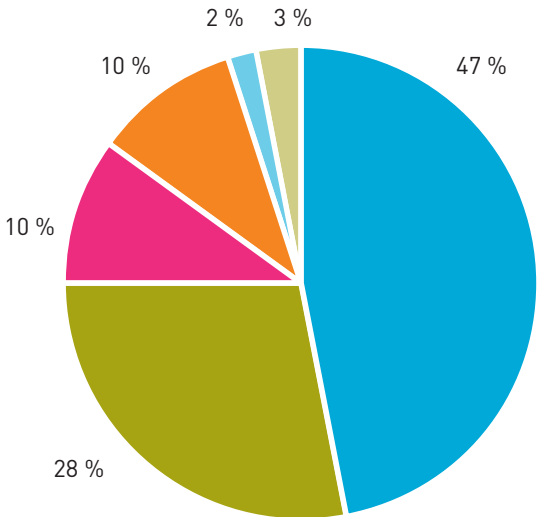
Different Parliamentary Committees have also expressed in their Budget statements their concern regarding the inadequate resources available for the task of the National Rapporteur on Trafficking in Human Beings and for the supervision of the enforcement of removal from the country. The Ombudsman’s office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

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

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

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

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



2. Equality brings legal protection to all

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

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

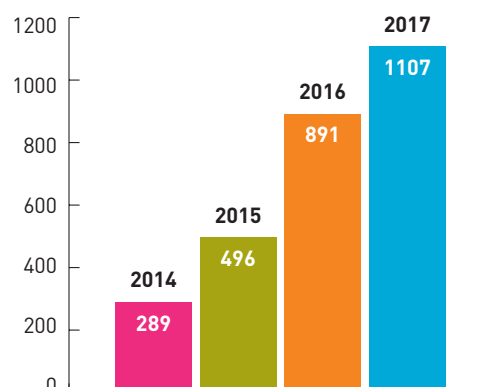
This chapter examines the Non-Discrimination Ombudsman's operating methods applied to tackling discrimination and promoting equality. The chapter also presents other legal remedies provided for in the non-discrimination legislation, such as the National Non-Discrimination and Equality Tribunal. In addition,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

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

GROUNDS FOR DISCRIMINATION UNDER THE NON-DISCRIMINATION ACT



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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

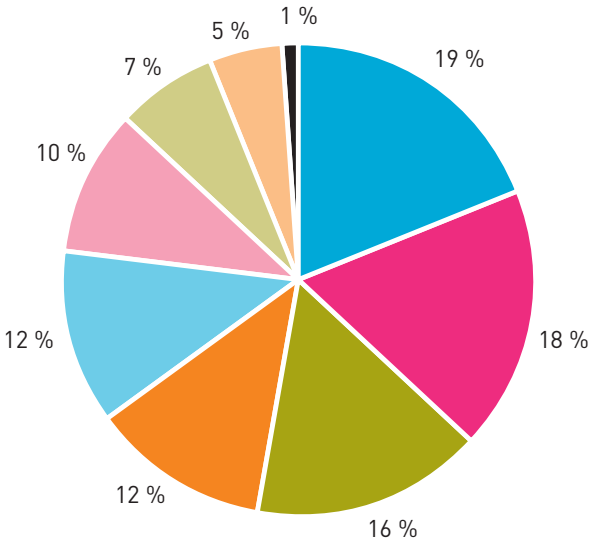
2.2. TACKLING DISCRIMINATION AND PROMOTING EQUALITY

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

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

2.2.1. OPERATING PROCEDURES OF THE NON-DISCRIMINATION OMBUDSMAN

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



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

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

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

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

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

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

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

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

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

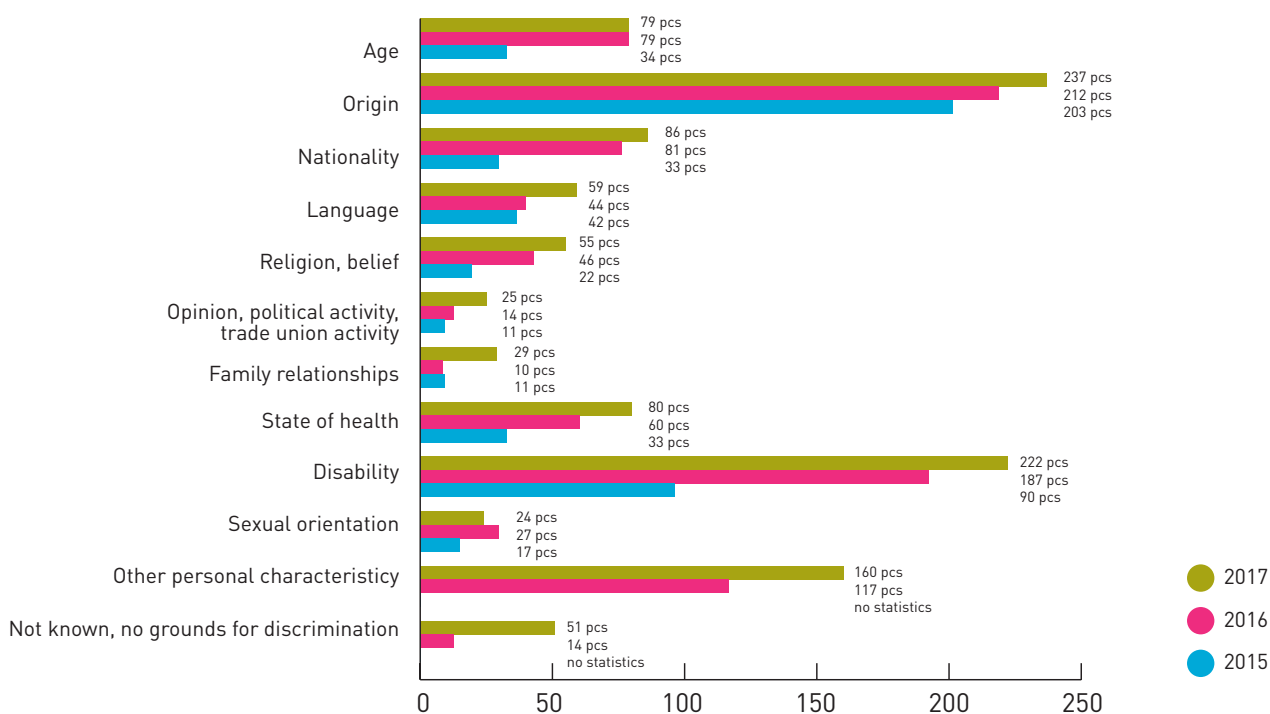
The importance of increasing awareness of multiple discrimination has been highlighted in a recently published report on the human rights of minorities within minorities and multiple discrimination ([Vähemmistöjen sisäisten vähemmistöjen ihmisoikeudet ja moniperusteinen syrjintä](#) [Juridica Lapponica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

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

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

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

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



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

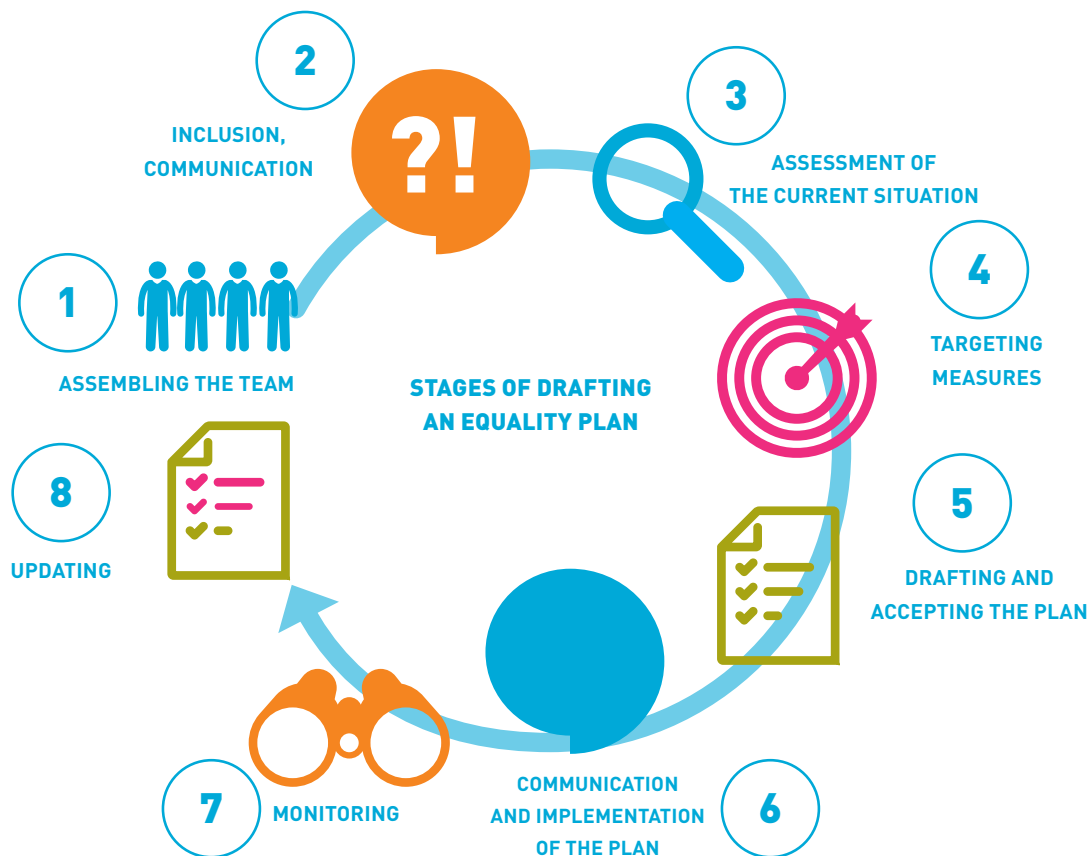
Experiences of discrimination may cause the victim to suffer from anxiety, depression, low self-esteem and feelings of marginalisation. If there are several experiences of discrimination, sorting them out takes a lot of time, and these experiences affect the individual's functional capacity. A single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

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

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

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

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



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

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

WHAT IS AN OPERATIONAL EQUALITY PLAN?

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

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

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

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

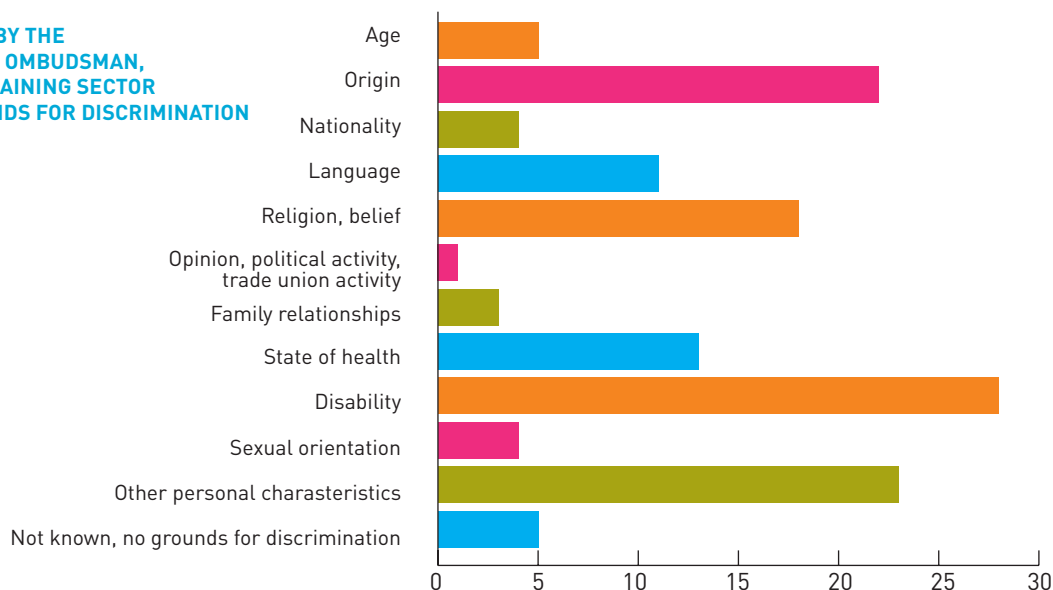
It is noted in [the Report of the Government on the application of language legislation](#) that children who have been born deaf or with a severely impaired hearing and their parents, living in different parts of the country, are treated very differently depending on the practices and appropriation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

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

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

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

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



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

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

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

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

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



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

THE MOST COMMON GROUNDS FOR DISCRIMINATION IN OTHER PRIVATE SERVICES 2017



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

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

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

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

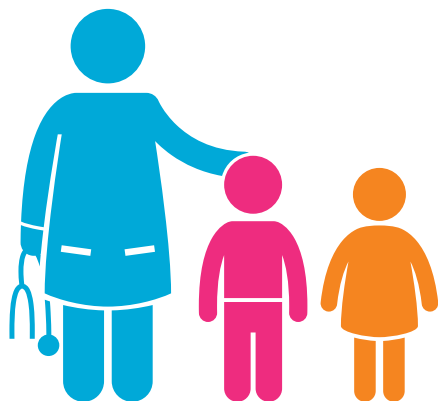
Restaurant services have been linked to situations where a person with foreign background has been denied access to a restaurant, even though they have presented valid identity documentation. The catering business has also engaged in public dialogue concerning personal identification documents required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

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

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

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

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

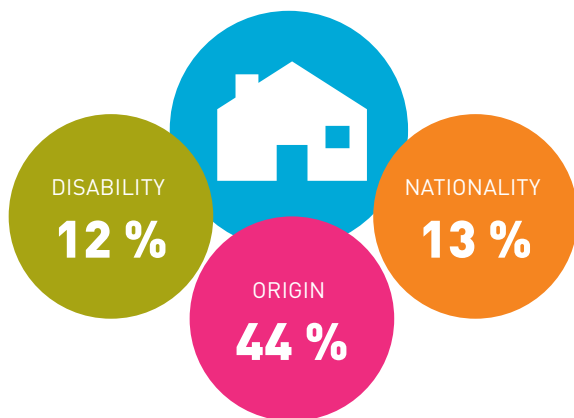


Social welfare and healthcare services are essential for the wellbeing and everyday life of individuals. Often these services are quite intimate by nature: as customers in health and social services, individuals must process their most personal matters or let an unknown person touch their body, for example.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

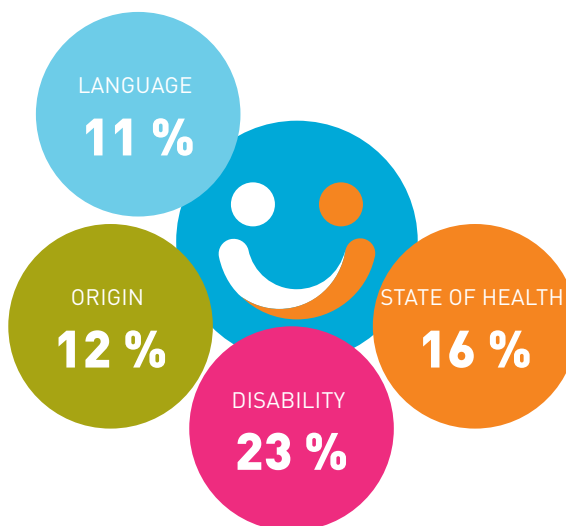
services and safeguarding the provision of services in the Swedish and Sámi languages are essential obligations, which will not be fully enforced unless they are underscored in the reforms.

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

THE MOST COMMON GROUNDS FOR DISCRIMINATION IN HOUSING 2017



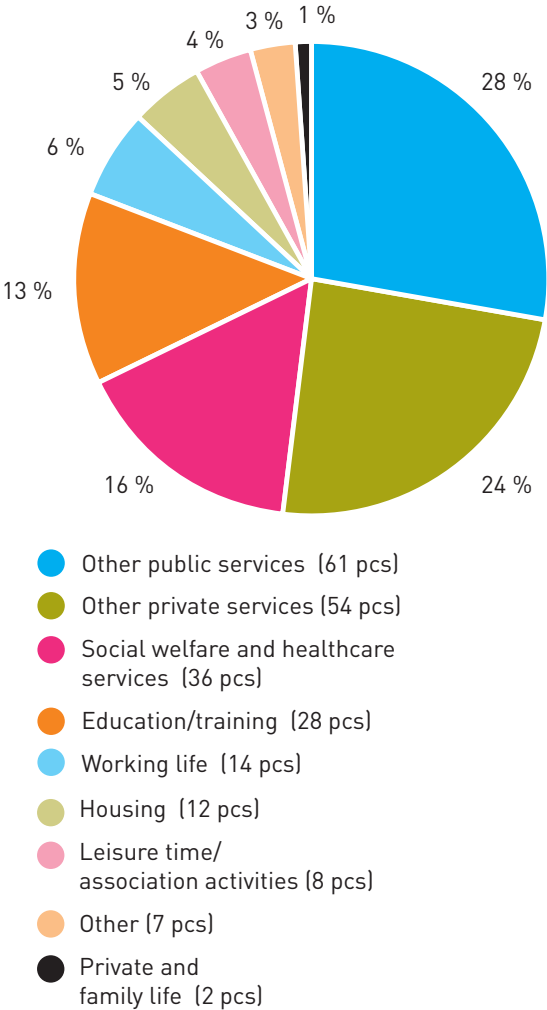
THE MOST COMMON GROUNDS FOR DISCRIMINATION IN SOCIAL WELFARE AND HEALTHCARE SERVICES 2017



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

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

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



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

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

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

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

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

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

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

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

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

2.6.2. EXPENSE RISK WEAKENS LEGAL PROTECTION IN RECEIVING COMPENSATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accepted by the Finnish Immigration Service	Reason accepted (%)		Decisions where applicant has provided the reason in total (N)	
	2015	2017	2015	2017
Previously experienced persecution as grounds for fear	49 %	38 %	73	86
Fear of physical or mental violence	85 %	19 %	120	108
The Finnish Immigration Service considers applicant's fear justified in objective examination	77 %	20 %	121	112

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

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

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

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

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

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

ARTICLE 4(4) OF THE QUALIFICATION DIRECTIVE:

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

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

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

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

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

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

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

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

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

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

3.3.3. POLICE ENFORCES REMOVAL FROM THE COUNTRY

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

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

THE NON-REFOULEMENT PRINCIPLE

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

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

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

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

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

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

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

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

**MONITORED REMOVALS FROM THE COUNTRY
1.1.2014–31.12.2017**

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

3.3.4. MONITORING IN THE FIELD

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

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

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

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

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

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

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

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

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

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

INFLUENCE METHODS OF MONITORING:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

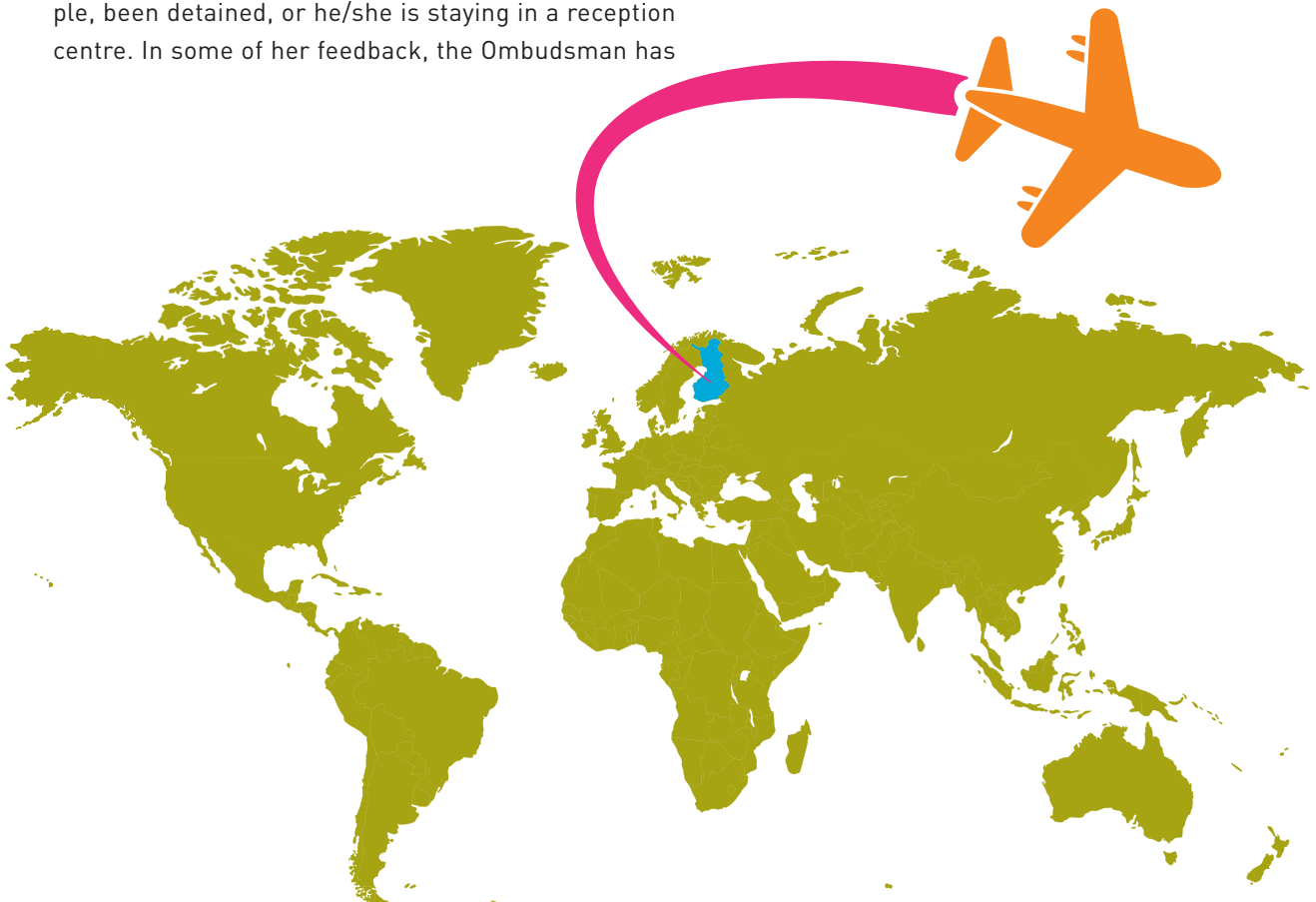
Communicating the return time well in advance is, in the view of the Police, sometimes problematic. External activities to prevent the removal from the country in some particular cases has increased the enforcing authority's caution with regard to communication. Some of the removals from the country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

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

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

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

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



The Non-Discrimination Ombudsman proposes the following to the Parliament

RECOMMENDATION 2:

PREPARATION OF AMENDMENTS TO THE ALIENS ACT

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

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

RECOMMENDATION 3:

PREPARATION OF AMENDMENTS TO THE RECEPTION ACT

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

RECOMMENDATION 4:

ASSESSING THE IMPLEMENTATION OF A FIREWALL FOR IRREGULAR MIGRANTS

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

RECOMMENDATION 5:

LAYING DOWN PROVISIONS FOR INDISPENSABLE CARE AND SUBSISTENCE

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

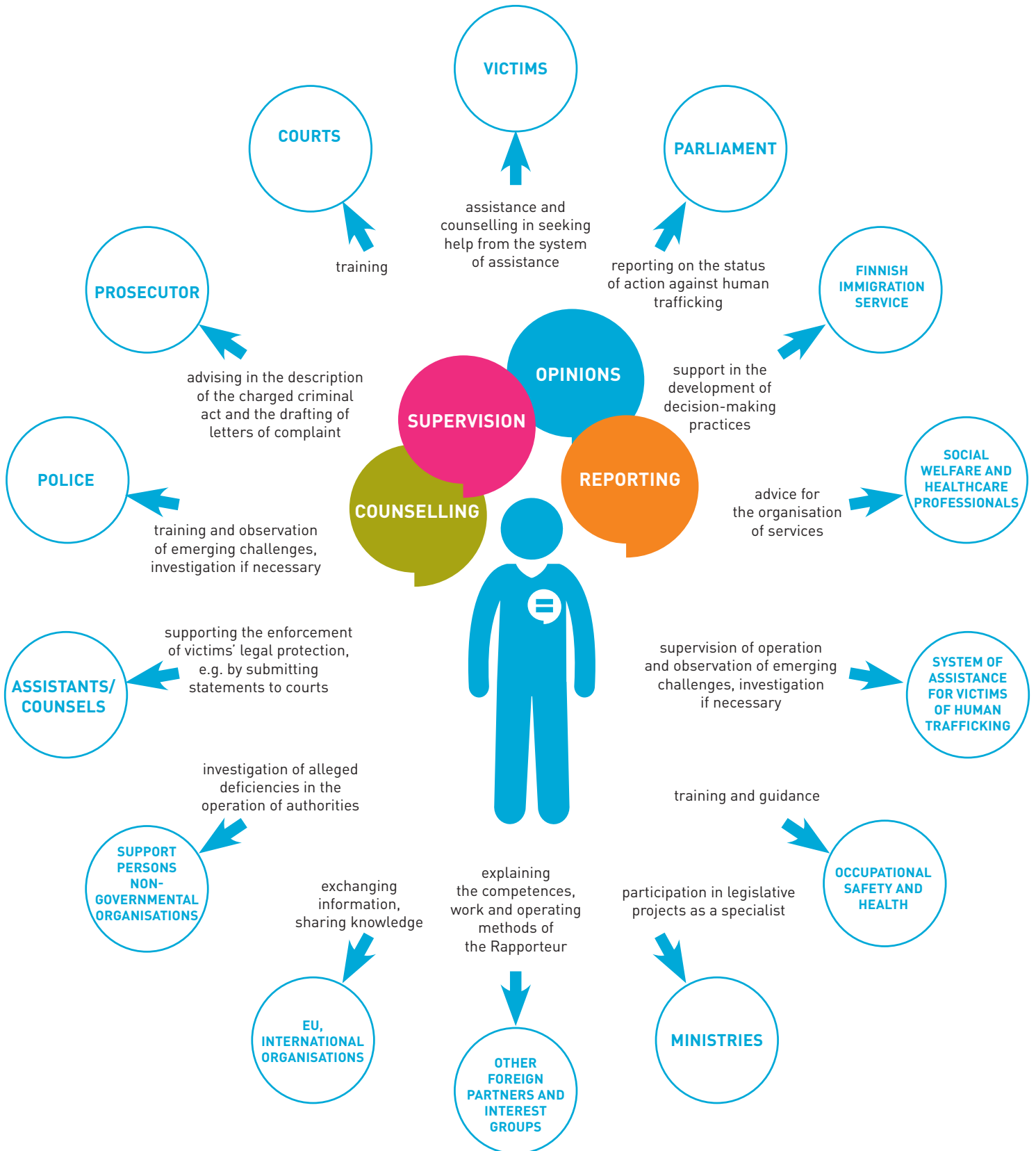
RECOMMENDATION 6:

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

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


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


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





DEVELOPMENTS IN THE ACTION AGAINST HUMAN TRAFFICKING IN FINLAND


<ul style="list-style-type: none"> EU Framework Decision on combating human trafficking (2002/629/JHA) 	2002					
<ul style="list-style-type: none"> EU Directive concerning the position of victims of human trafficking (2004/81/EC) Human trafficking is made punishable by law 	2004					
<ul style="list-style-type: none"> The first action plan against human trafficking is adopted 	2005		2			
<ul style="list-style-type: none"> Finland ratifies the Palermo Protocol on trafficking in persons (SopS 70-71/2006) Provisions on residence permits for victims of human trafficking and the reflection period are added to the Aliens Act (amendment of the Aliens Act) District Court issues the first sentence for human trafficking 	2006		4		7	
<ul style="list-style-type: none"> System of assistance for victims of human trafficking begins its operation Court of Appeal issues its first sentence for human trafficking 	2007		3		0	
<ul style="list-style-type: none"> Government action plan against human trafficking is issued 	2008		6		5	
<ul style="list-style-type: none"> Ombudsman for Minorities (currently Non-Discrimination Ombudsman) begins work as the National Rapporteur on Trafficking in Human Beings Ombudsman starts co-operation with the system of assistance for victims of human trafficking 	2009	14	3		0	
<ul style="list-style-type: none"> Ombudsman submits her first report to the Parliament Ombudsman initiates closer co-operation with the police 	2010	23	13	2	0	
<ul style="list-style-type: none"> EU Directive on preventing and combating trafficking in human beings (2011/36/EU) Ombudsman's recommendation: The Ministry of Justice sets a working group to prepare amendments to the Criminal Code Ombudsman engages in closer co-operation with the Finnish Immigration Service Ombudsman engages in closer co-operation with the Occupational Safety and Health Administration 	2011	80	30	3	1	
<ul style="list-style-type: none"> Finland adopts the Council of Europe Convention on Action against Trafficking in Human Beings (SopS 43-44/2012) Ombudsman's recommendation: The Ministry of the Interior shall appoint a working group to draft a proposal for a special act on human trafficking The police issue instructions on investigating human trafficking offences Ombudsman's recommendation: The Occupational Safety and Health Administration provides instructions on identifying human trafficking and referring victims to the system of assistance 	2012	88	25	7	7	15
<ul style="list-style-type: none"> Ombudsman's recommendation: The Ministry of the Interior appoints a working group to prepare the coordination of action against human trafficking in the Government Ombudsman submits her report on the compatibility of Finnish action against human trafficking with the Council of Europe Convention on Action against Trafficking in Human Beings 	2013	108	21	7	4	11
<ul style="list-style-type: none"> Ombudsman's recommendation: The Government coordinator of action against human trafficking begins work First visit to Finland by GRETA, the supervisory body monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings Ombudsman submits her second report to the Parliament Supreme Court issues its first sentence for human trafficking 	2014	85	20	5	0	26
<ul style="list-style-type: none"> Ombudsman's recommendation: amendments to the Criminal Code and the act on assisting victims of human trafficking enter into force GRETA issues recommendations for Finland 	2015	88	30	7	7	11
<ul style="list-style-type: none"> Ombudsman publishes the study on practices in applying the Aliens Act on victims of human trafficking 	2016	167	72	8	6	17
<ul style="list-style-type: none"> Ombudsman's recommendation: the Finnish Immigration Service reforms its practices in the handling of residence permit applications of victims of human trafficking 	2017	245	71	5	*	18

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

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

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

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

 pcs/year = Sentences under the category of human trafficking

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

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

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

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

4.2.1. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2.7. LINKING ASSISTANCE TO CRIMINAL PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Non-Discrimination Ombudsman proposes the following to the Parliament

RECOMMENDATION 7:

DRAFTING A SPECIAL ACT ON ASSISTANCE FOR VICTIMS OF HUMAN TRAFFICKING

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

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

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

RECOMMENDATION 8:

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

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

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

RECOMMENDATION 9:

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

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

RECOMMENDATION 5:

LAYING DOWN PROVISIONS ON INDISPENSABLE CARE AND SUBSISTENCE

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

RECOMMENDATION 6:

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

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

RECOMMENDATION 7:

DRAFTING A SPECIAL ACT ON ASSISTANCE FOR VICTIMS OF HUMAN TRAFFICKING

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

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

The assistance would be made more victim-oriented, so that the victims of human trafficking who are in a particularly vulnerable position would be more often referred to the system of assistance for victims of human trafficking.

RECOMMENDATION 8:

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

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

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

RECOMMENDATION 9:

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

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



NON-DISCRIMINATION

OMBUDSMAN

YHDENVERTAISUUSVALTUUTETTU
DISKRIMINERINGSOMBUDSMANNEN
OVTTAVEARDÁSAŠVUODÁÁITTARDEADDJI