

Report on the significance of subsequent applications in the asylum process

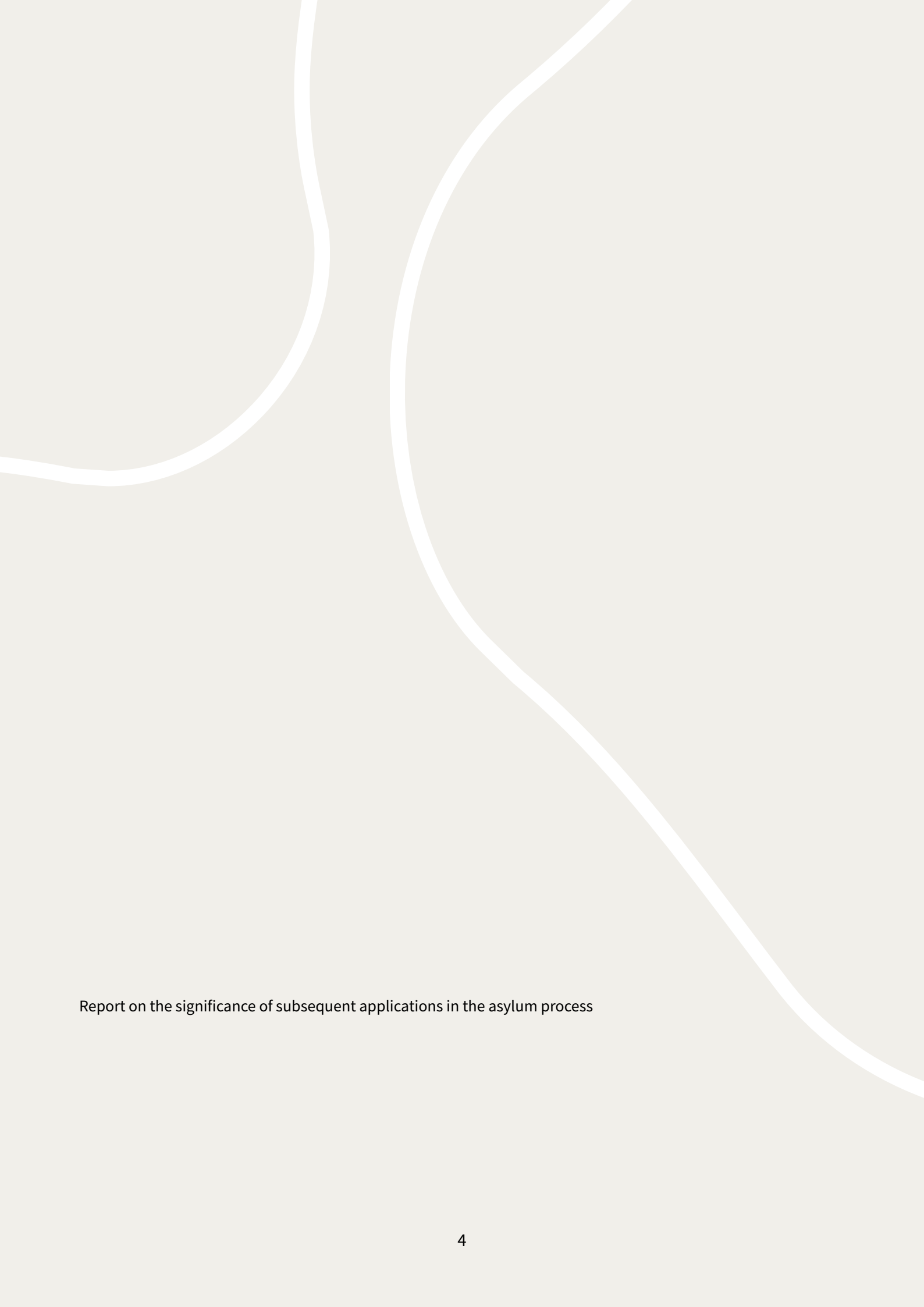


YHDENVERTAISUUSVALTUUTETTU
DISKRIMINERINGSOMBUDSMANNEN

Report on the significance of subsequent applications in the asylum process



YHDENVERTAISUUSVALTUUTETTU
DISKRIMINERINGSOMBUDSMANNEN



Report on the significance of subsequent applications in the asylum process

Contents

1. Introduction	7
2. Same grounds for asylum in subsequent application	11
3. New grounds and hidden vulnerabilities	15
4. Conclusions	18
4.1. Subsequent applications are a key factor in the realisation of asylum seekers' basic rights and liberties	18
4.2. Threshold for admission should not be raised	20
4.3. Issues related to credibility assessment must be resolved	22
4.4. An asylum procedure of a high quality supports the detection of vulnerable position	24
5. Recommendations of the Non-Discrimination Ombudsman	26
5.1. Key recommendations	26
5.2. Recommendations for different parties	27



1. Introduction

One of the duties of the Non-Discrimination Ombudsman is the promotion of the status and rights of foreign nationals. In particular, the Ombudsman aims to promote the rights of the most vulnerable foreign nationals and to identify issues in the law and its application. Reports based on the Ombudsman's broad right of access to information are a way of introducing issues into the social debate. In addition to the promotion of the rights of foreign nationals, the Ombudsman has a wider remit to promote equality and tackle discrimination, to act as a national rapporteur on trafficking in human beings and violence against women, and to monitor the deportation of foreign nationals at all the stages of the removal process.

For this report, the Ombudsman reviewed subsequent applications for international protection and related decisions. The aim was to examine in what type of situations positive decisions were made on subsequent applications between March and August 2023 and to assess the significance of subsequent applications as part of the Finnish asylum system.

According to previous research, the manner in which subsequent applications are discussed and

the broader discourse emphasise the idea that the asylum procedure is misused by means of subsequent applications, and subsequent applications may be associated with an assumption that they are unfounded.¹ However, according to statistics of the Finnish Immigration Service, the number of positive decisions on subsequent applications is quite high. During the period under review, positive decisions were made for 41% of all subsequent applications, while 44% of decisions on all asylum applications were positive.² The assumption that subsequent applications are particularly unfounded is therefore not justified in the light of the statistics.

Subsequent applications can be based on a variety of factors such as changes in the security situation in the asylum seeker's country of origin, new grounds for asylum or new elements. A subsequent application may also be submitted due to issues or

¹ Elina Pirjatanniemi, Inka Lilja, Maija Helminen, Kristiina Vainio, Outi Lepola and Anne Alvesalo-Kuusi, *Ulkomaalaislain ja sen soveltamiskäytännön muutosten yhteisvaikutukset kansainvälistä suojelua hakeneiden ja saaneiden asemaan (VN TEAS 2021:10)*.

² See Statistics of the Finnish Immigration Service, review period March–August 2023.

challenges related to the previous asylum procedure. Efforts to improve the efficiency of the asylum process were made especially in 2015 and 2016, and according to studies, this influenced the quality of the asylum process and the need to submit subsequent applications.³

A review of positive decisions on subsequent applications can support informed decision-making based on basic rights and liberties. The Government Programme of Prime Minister Petteri Orpo's Government sets as the goal the prevention of unfounded subsequent applications and the tightening of the conditions for submitting subsequent applications.⁴ The Government Programme also specifies that the processing of asylum applications will be made more efficient. To make more information on subsequent applications available, the Non-Discrimination Ombudsman decided to prepare this report, which focuses in particular on positive decisions on subsequent applications.

The report examines in more detail subsequent applications for which the grounds for a positive decision existed. In some cases, these grounds were already invoked during the asylum seeker's previous asylum procedure. The report focuses in particular on positive decisions by the Finnish

Immigration Service on subsequent applications where the decision was based on grounds for asylum or another element that was raised or that already existed during the previous procedure. This enables the identification of challenges related to the previous asylum procedure and its quality, which will contribute to making the correct decision at the earliest possible stage, thus improving the efficiency of the asylum process and reducing the number of subsequent applications. The aim is therefore to examine the grounds on which positive decisions on subsequent applications are made, and in particular whether subsequent applications could be prevented by identifying potential grounds for international protection at an earlier stage of the process.

As the research material, positive decisions made by the Finnish Immigration Service on subsequent applications for international protection during a period of six months, from 1 March 2023 to 31 August 2023, were requested. During this period, the Finnish Immigration Service made a total of 186 positive decisions on subsequent applications contained in 142 decision documents.⁵

To answer the questions raised above, a cursory review of the decisions was made. To answer

³ Elina Pirjatanniemi, Inka Lilja, Maija Helminen, Kristiina Vainio, Outi Lepola and Anne Alvesalo-Kuusi, *Ulkomaalaislain ja sen soveltamiskäytännön muutosten yhteisvaikutukset kansainvälistä suojelua hakeneiden ja saaneiden asemaan (VN TEAS 2021:10)*; Elsa Saarikkomäki et al., *Kansainvälistä suojelua koskevat päätökset Maahanmuuttovirastossa 2015–2017 – Pilottitutkimus 18–34-vuotiaita Irakin kansalaisia koskevista myönteisistä ja kielteisistä päätöksistä (Oikeustieteellisen tiedekunnan tutkimusraportteja ja katsauksia 1/2018)*.

⁴ A strong and committed Finland – Programme of Prime Minister Petteri Orpo's Government (20 June 2023).

⁵ Although there were 142 decision documents, the statistics show a total of 186 positive decisions. This is because in some cases only one decision document is issued for a parent and their children, for example. When comparing negative and inadmissible decisions, the correct reference figure is 186, but the number of decision documents subject to the content review was 142.

the research questions, all decisions where (1) the grounds for granting asylum remained the same or partially the same since at least the previous application or (2) the grounds were new but likely existed at least at the time of the previous application were reviewed in more detail.⁶ A total of 49 decisions (35% of the research material) were reviewed in more detail.⁷

To answer the research questions, information about the grounds for the positive decision and the grounds for the previous asylum decision was required. However, the grounds given in decisions on the granting of asylum are rather limited, and the decisions alone did not provide sufficient information for a more detailed analysis of the matter. For this reason, different background materials were obtained for the decisions selected for a closer review, depending on what was considered necessary for a more detailed analysis of the situation in each case. For example, previous decisions of the Finnish Immigration Service, the Administrative Court or the Supreme Administrative Court for the asylum seeker were used as the background materials. Internal supporting memoranda on the positive decisions made by the Finnish Immigration Service on subsequent applications

were also requested and received for a total of 29 decisions.⁸

The material for the report therefore consists of the 49 decisions selected for a more detailed review, as well as any previous asylum decisions, court decisions and supporting memoranda on these decisions. As background material had to be obtained for each of the cases reviewed in more detail, the period under review was kept relatively short. Given the number of decisions and the volume of background material, the analysis must primarily be considered a qualitative one.

The decisions reviewed are secret pursuant to section 24, subsection 1, paragraph 24 of the Act on the Openness of Government Activities. To ensure that the information contained in the report will not endanger the safety of the persons concerned or their next of kin, the case studies based on the research material have been anonymised and kept at a general level by, for example, not specifying the age or minority of the asylum seekers in some of the cases.

The decisions reviewed in more detail are assessed in Chapters 3 and 4 of this report. The third chapter covers in more detail decisions in which a positive

⁶ In some cases, the selection for further review required some delimitation as to whether grounds that remained partly unchanged were sufficiently important on the basis of the preliminary data to warrant a further review, for example.

⁷ Changes in security situation where a change in the circumstances took place during the time that elapsed between the previous asylum application and the subsequent application and subsequent applications where the grounds for asylum were new and did not exist at the time of the previous asylum application were excluded from the closer review. In addition, applications that were previously determined inadmissible under the Dublin Regulation were excluded from the further review.

⁸ Supporting memoranda are only prepared when asylum is granted to the asylum seeker (section 87 of the Aliens Act). Supporting memoranda are not prepared when the Finnish Immigration Service grants asylum on the basis of a decision by an Administrative Court or the Supreme Administrative Court.

decision on a subsequent application was made, in whole or in part, on grounds already invoked by the asylum seeker in their previous asylum application. The chapter focuses especially on why a different assessment of the need for international protection was reached in the previous decision and the decision on the subsequent application.

Decisions where the grounds for granting asylum were new, but already existed at the time of the previous asylum application are reviewed in the fourth chapter, paying particular attention as to why the matter had not arisen before. Special attention is paid to various circumstances related to the asylum seeker's potentially vulnerable position and their proper identification.

Positive decisions that were clearly based on a changed security situation were not reviewed in detail for this report. A closer examination of positive decisions based on a change in the security situation was not appropriate, as it is quite clear on which grounds a subsequent application is investigated and a positive decision made when the security situation has changed. There were a total of 55 positive decisions based on changed security situation, of which more than half were based on changes in the security situation in Afghanistan and a change in the Finnish Immigration Service's policy on Afghanistan.⁹ Even though positive decisions based on a change in the security situation were not reviewed in more detail, it does not mean that there could not have been issues within the asylum seeker's previous asylum procedure

in these cases, or that the changes in the security situation could not have been taken into account at an earlier stage.

⁹ Many of the Afghan asylum seekers had already invoked the threat posed by the Taliban in their previous asylum procedures.

2. Same grounds for asylum in subsequent application

According to the Aliens Act, the admissibility of a subsequent application requires that the application includes new elements or findings which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection. This chapter focuses on cases where the asylum seeker invoked the same grounds for asylum in a previous asylum application and in the subsequent application. In 14 decisions, a residence permit was granted on grounds for asylum that had already been identified at least in the previous application and that had remained unchanged. Furthermore, in 28 decisions at least some of the grounds for a positive decision had already appeared in the previous asylum application. Some of the decisions were returned by the courts for reconsideration and others were based on an assessment by the Finnish Immigration Service that differed from its previous asylum decision.

In most of the cases based on the same or partly similar grounds, the grounds involved conversion to Christianity. Other circumstances included political activity and its possible impact on the risk of persecution, lack of a safety network and sexual orientation. In some decisions, the grounds were as-

essed cumulatively, with several factors influencing the granting of the residence permit.¹⁰

Most of the decisions where the same grounds for asylum were invoked in more than one asylum application concerned conversion to Christianity and an assessment of the credibility of the religious beliefs. In addition to decisions on conversion to Christianity, an assessment of credibility took place in the case of other decisions such as several decisions where the asylum seeker's political profiling in their country of origin was assessed, a few decisions where the lack of a safety network was assessed, and one decision where the credibility of serious violations of the asylum seeker's rights was assessed.

In some cases, the asylum seeker's previous application on the same grounds had been ruled inadmissible. The inadmissibility may have contributed to the failure to identify conversion to Christianity at an earlier stage, for example.

¹⁰ E.g. Case 3.

In case of circumstances such as religious beliefs, it may not be easy to assess the credibility of the asylum seeker's account. For this reason, the Non-Discrimination Ombudsman emphasizes that the threshold for admissibility in cases involving a credibility assessment should be kept low. For example, to examine the evolution of an asylum seeker's religious beliefs, the application must be admitted and the asylum seeker interviewed.

It is difficult to assess based on the research material exactly what circumstances led to the change in the credibility assessment, but the asylum seekers' personal accounts and, in cases of conversion to Christianity, their deepened knowledge and ability to describe their experience of their faith were taken into account in many decisions. However, it should be kept in mind that studies have shown that persons who grow up in a communal culture tend to report more about their social relationships and context than persons who grow up in an individual-centred culture such as Finland, who tend to report their own personal experiences instead.¹¹ It may therefore be more natural for an asylum seeker to describe the communal spirit of their congregation than their personal experiences of faith. Indeed, it has been assessed based on the research literature that the Finnish Immigration Service's understanding of religion does not always correspond to the religious paradigm of asylum seekers,

and the interviewers may also have inaccurate assumptions about religion that affect the credibility assessment.¹²

In addition, the assessment of the credibility of religious beliefs may have been based on the longevity and permanence of the conviction. Long-standing religious practice surely contributes to an assessment of the asylum seeker's conviction being authentic. However, the same weight should not be given to the passage of time when assessing the credibility of newly converted asylum seekers. A credibility assessment that focuses on the longevity of the grounds for asylum also increases the need for subsequent applications in cases where the credibility should and could have been established already in connection with the previous application.

In a credibility assessment on both religious faith and other grounds for asylum, attention may also have been paid to the asylum seeker's state of health. Many asylum seekers in the research material also had physical or mental health problems that can be seen as affecting their ability to communicate their situation in a coherent and personal way.¹³ In previous negative decisions, this may have been taken into account by stating that the asylum seeker's account was overly superficial despite the health problems, for example. On the other hand, positive decisions on subsequent applications may have determined that even though the account was

¹¹ Jenny Skrifvars and Hedayat Selim, 'Muisti, trauma ja kulttuuri turvapaikkaprosessissa' in Haavoittuva asema turvapaikkaprosessissa (The Finnish Refugee Advice Centre 2022); Jenny Skrifvars, Veronica Sui, Jan Antfolk, Tanja van Veldhuizen and Julia Korkman, Psychological assumptions underlying credibility assessments in Finnish asylum determinations (Nordic Psychology 2022).

¹² Ilona Blumgrund, Hilka Lydén and Alina Leminen, Migriin teologia turvapaikkapäätösten valossa (Diakonian Tutkimus 2:2022); Hedayat Selim, Julia Korkman, Peter Nynäs, Elina Pirjatanniemi and Jan Antfolk, A review of psycho-legal issues in credibility assessments of asylum claims based on religion (Psychiatry, Psychology and Law 2023).

¹³ In at least 14 of the cases reviewed in more detail, attention was paid to the asylum seeker's health issues in some document.

superficial, it was not of decisive importance when considering the health issues, and the account had to be considered credible.

An asylum seeker's long-term and severe mental health disorders may also mean that the asylum seeker must be considered a person with a disability due to the resulting functional limitations, and that their equal rights during the asylum process must be ensured by taking into account the prohibition of indirect discrimination (section 13 of the Non-discrimination Act) and the obligation to make reasonable accommodation (section 15 of the Non-discrimination Act). According to Article 1 of the UN Convention on the Rights of Persons with Disabilities, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. This must be taken into account both in such a person's asylum process and in decision-making. Decisions must assess whether the rights of persons with disabilities are met in, for example, the light of the UN Convention on the Rights of Persons with Disabilities, which is directly applicable legislation in Finland. In the above-mentioned example of a child with a disability,¹⁴ it would have been justified from the perspective of the meeting of the rights of the child to identify the impact of the lack of domestic services on the child's basic rights and liberties such as the right to education, equal participation in society and independent living.¹⁵

¹⁴ Case 42.

¹⁵ See Article 7 on the rights of children with disabilities in the Convention on the Rights of Persons with Disabilities.

An asylum seeker's ability to give a personal account of their experiences may also be affected by any traumatic experiences they may have had. Research suggests that people may remember fewer and different details of traumatic events than of neutral events.¹⁶ For example, in the case of the previously mentioned asylum seeker who had experienced serious violations of their rights, the Finnish Immigration Service initially found that the asylum seeker's account of their situation was limited and superficial, and did not find the asylum seeker's account credible in all respects, thus refusing to grant asylum.¹⁷

In some cases, an asylum seeker's positive decision was linked to the same grounds for asylum and other elements as a previous negative decision, but additional information had been provided which changed the outcome of the credibility assessment. In addition, attention may have been paid to additional explanations given by witnesses at the oral hearing in the case of decisions returned by the court for reconsideration, for example. In one case, the credibility of being subjected to serious violations of one's rights was increased by medical reports submitted in connection with the subsequent application. As regards the medical reports, it can be considered that they should have been requested already at the time of the first asylum application after the asylum seeker had reported serious violations of their rights. It can therefore be considered whether the grounds for asylum were sufficiently examined in connection with the

¹⁶ Jenny Skrifvars and Hedayat Selim, 'Muisti, trauma ja kulttuuri turvapaikkaprosessissa' in Haaivoittuva asema turvapaikkaprosessissa (The Finnish Refugee Advice Centre 2022).

¹⁷ Case 49.

previous negative decisions or whether the threshold for identifying the need for international protection was too high in some cases.

3. New grounds and hidden vulnerabilities

Many circumstances leading to vulnerability may be associated with shame or fear, in which case the vulnerable position may not become apparent in the first application for asylum unless the matter is actively, confidentially and sensitively examined by the Finnish Immigration Service. Qualified counsels and staff at the reception centre are also important in the examination of vulnerabilities. According to the research material, information such as the asylum seeker being subjected to a risk of genital mutilation, their sexual orientation, sexual violence or trafficking in human beings may come to light in connection with a subsequent application.

In some cases, the Finnish Immigration Service may have initially considered an asylum seeker's account of a vulnerability that already existed at the time of the previous asylum procedure to be implausible because the applicant did not mention it until in the subsequent application. For example, in some cases it was not considered credible that the asylum seeker had failed to disclose a particular fact because of fear. In addition, in some decisions attention was drawn to the fact that the asylum seeker had given information that was inconsistent with the vulnerability during previous

asylum procedures. Individual examples from the research material include a case where an asylum seeker who cited sexual orientation in a subsequent application had described feelings towards a person of the opposite gender in a previous application and a case where a person who was forced to marry had previously stated that their rights had not been violated.

The Finnish Immigration Service's guidelines take into account the effects of the tradition of shame and silence on the disclosure of facts about domestic abuse, for example.¹⁸ However, it seems that the fact that reporting a vulnerability at an earlier stage may have been challenging for the asylum seeker or that the asylum seeker may not even have been aware of its relevance to the asylum process has not been sufficiently taken into account in connection with some subsequent applications. Reporting the vulnerability may also have posed a threat to the asylum seeker's safety. In addition, an active effort to hide sensitive elements from other people

¹⁸ E.g. Ohje lähisuhdeväkivallan huomioimiseen turva-paikkaprosessissa (MIGDno-2019-540).

may have been at play. For this reason, the Administrative Courts have returned applications to the Finnish Immigration Service for reconsideration in cases where the Immigration Service did not previously consider grounds based on vulnerability put forward by the asylum seeker in a subsequent application to be credible. A double threshold for vulnerability can therefore be observed in some cases where the asylum seeker's vulnerability is first not revealed and then the vulnerability is not considered credible.

The research material includes some cases where the applicant did not have an interviewer or interpreter of the same sex available at all stages of the asylum procedure, which contributed to the fact that not all grounds for asylum were reflected in their previous applications. As a general rule, the detection of vulnerabilities can be supported by ensuring that persons present during the interview are of the same gender as the asylum seeker, and by also making this general rule known to the reception centre and the counsels so that it will be possible to express any different wishes. The issue has also been considered by the Supreme Administrative Court in its preliminary ruling KHO:2020:91, according to which "considering A's vulnerable position and the sensitivity of A's grounds for asylum, A could not have been expected to be able to share her experiences during the asylum interview in the presence of a male interpreter and a male interviewer in such a way that A could be considered to have benefited from the rights and complied with the duties related to the asylum procedure. The Supreme Administrative Court therefore finds that the Finnish Immigration Service should have provided A with support that took into account the special needs during the asylum procedure. In this case,

the preferred form of support would have been to provide A with an opportunity to have an interviewer and an interpreter of the same sex. For the above reasons, the asylum procedure was not appropriate. The Finnish Immigration Service could therefore not reliably assess the credibility of A's account on these grounds."

Some decisions concerned vulnerabilities that the Finnish Immigration Service could have already identified in connection with previous asylum applications. For example, female genital mutilation is so commonplace in certain areas that an attempt to examine the matter should be made without the asylum seeker explicitly invoking this ground. In its decision KHO:2019:93, the Supreme Administrative Court found that in a case concerning a Somali family, the Finnish Immigration Service should have assessed whether the asylum seeker's daughter would be at risk of mutilation if returned to her country of origin. In the said decision, the Finnish Immigration Service stated that according to its guidelines, it can also examine the threat of circumcision against minors on its own initiative if the practice exists in the asylum seeker's area of origin or population group. In addition to an examination into the threat of genital mutilation at the authority's initiative, there may be cases where the asylum seeker has mentioned issues in previous asylum procedures that, if followed up, could have already revealed their vulnerable position. This was what happened in a case concerning forced marriage and violations of rights during it, for example.

The research material also includes cases where a potentially vulnerable position could have been confirmed earlier if the asylum seeker's state of health or working capacity had been more active-

ly examined.¹⁹ The asylum process must identify personal characteristics of the asylum seeker that are also grounds for discrimination under the Non-discrimination Act, such as disability and state of health (section 8 of the Non-discrimination Act), and active measures must be taken to ensure that there is no discrimination in practice and in individual cases.

¹⁹ E.g. Case 49, Case 13.

4. Conclusions

4.1. Subsequent applications are a key factor in the realisation of asylum seekers' basic rights and liberties

Of the decisions on subsequent applications made between March and August 2023, 41% led to the granting of asylum, subsidiary protection or other type of residence permit. In the vast majority of positive decisions (asylum, subsidiary protection or other residence permit), the asylum seeker was granted asylum. The proportion of positive decisions may vary between different periods²⁰, but the research material allows the drawing of the general conclusion that there is a relatively high number of positive decisions on subsequent applications.

The high percentage of positive decisions shows that subsequent applications are often a key element in safeguarding the basic rights and liber-

ties of asylum seekers and in respecting the principle of non-refoulement. The discourse on abuse of the asylum system via subsequent applications²¹ is problematic also from this point of view. It is therefore essential that the importance of subsequent applications in the current asylum system is recognised when drafting legislation, and that legislative reforms are not based on the assumption that subsequent applications are unfounded.

Based on the proportion of positive decisions on subsequent applications, it seems that all the grounds for asylum or residence permit relating to an asylum seeker's situation have not always been properly identified in connection with previous asylum decisions. Around one third of positive decisions concern cases where the asylum seeker first received a negative decision and subsequently a positive decision on the same or partly the same grounds, or where a vulnerability that existed but was not previously identified emerged in connec-

²⁰ For example, after the period under review, between August 2023 and January 2024, the proportion of positive decisions on subsequent applications was lower at 32%.

²¹ Elina Pirjatanniemi, Inka Lilja, Maija Helminen, Kristiina Vainio, Outi Lepola and Anne Alvesalo-Kuusi, *Ulkomaalaislain ja sen soveltamiskäytännön muutosten yhteisvaikutukset kansainvälistä suojelua hakeneiden ja saaneiden asemaan (VN TEAS 2021:10)*.

tion with the subsequent application. In some cases, the overall estimate may have changed because of additional information submitted or other new elements. However, in some cases, an examination of the decisions did not reveal any reasons for amending the assessment.

Furthermore, 42% (59 pcs) of the positive decisions on subsequent applications in the research material were only made after the case was referred to the Finnish Immigration Service for reconsideration by the court. A total of 15% (22 pcs) of the positive decisions on subsequent applications were not made until after the court had found that the requirements for a permit were met, in which case it was not simply a change in circumstances or new information that required the matter to be referred back to the Finnish Immigration Service for reconsideration. In cases where there was no change in the asylum seeker's circumstances at the appeal stage, the situation can be considered to be problematic both from the human point of view and in terms of the efficiency of the process. An appeal prolongs the process and also delays the start of the asylum seeker's actual integration.

It is therefore essential that the asylum procedure is further developed to ensure that the elements relevant to the granting of a residence permit are identified, clarified and accepted as facts at the earliest possible stage of the process instead of only at the appeal or subsequent application stage.

Meanwhile, it must be ensured that the asylum procedure is not developed into a direction that would increase the need for subsequent applications.. Since 2015, the asylum procedure and the

rights of foreign nationals have been subject to a number of changes in practice and legislation that were justified by the need to make the asylum procedure more efficient, for example.²² The changes concerned matters such as the granting of residence permits on grounds of preventing deportation, the abolition of reception services, legal aid for asylum seekers, the shortening of appeal periods and the requirements for the admissibility of subsequent applications. At the same time, efforts were made to improve the efficiency of asylum interviews by reducing the time allocated for them and by using remote interpreters and subsequently also remote interviewers.

In light of the above-mentioned research data, the changes and improvements in efficiency have led to an increased need for subsequent applications.²³ Also in the case of this report, the majority of asylum seekers who received a positive decision on their subsequent application in 2023 first applied for international protection in 2015. The deficiencies in the first asylum procedures have followed the applicants through the subsequent procedures, and addressing them has been challenging due to the threshold for admissibility of subsequent applications. That is why the applicants did not receive a positive decision on their subsequent application until 2023, eight years after their first application.

Therefore, reforms that seek to improve the efficiency of the asylum process without taking into account the impact of the measures on the qual-

²² Ibid.

²³ Ibid.

ity of the process and thus also on the number of subsequent applications should not be repeated. A proposed legislative amendment pending in the spring of 2024 on holding asylum interviews via a video link without the asylum seeker's consent and an entry in the Government Programme on no longer going over the asylum interview record with the asylum seeker at the end of the interview are examples of efficiency measures that are most likely to have a negative impact on the quality of the asylum procedure. Video link interviews should only be arranged if the asylum seeker so wishes to best accommodate the raising of sensitive grounds for asylum, for example. The going over of the asylum interview record during the interview should only be skipped if the asylum seeker will review the record with their counsel. In such cases, care should also be taken to ensure that the record will actually be reviewed and that the costs of the counsel and interpreter arising from it will be fully reimbursed.

When the asylum process is carefully implemented and realised with adequate resources, there are better opportunities to identify and properly consider all elements relevant to the granting of asylum or a residence permit starting from the first asylum application. Sufficient resources support high quality of the procedure by, for example, ensuring that there is sufficient time to deal with everything starting from the first asylum application and sufficient resources to boost and further develop the skills of the interviewers and decision-makers. To ensure identification of asylum seekers' vulnerable position, examination of the grounds for asylum and protection under the law, ensuring appropriate counsel resources for asylum seekers is also important.

4.2. Threshold for admission should not be raised

The requirement for admissibility of a subsequent application is that the application includes new elements or findings which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection, and that the applicant was, through no fault of his or her own, incapable of presenting these elements or findings in connection with the processing of the earlier application or the related request for review.

In many of the cases examined in the Non-Discrimination Ombudsman's report, asylum seekers' previous applications had been ruled inadmissible. For example, on the same grounds, the asylum seeker could have first received a negative decision, followed by a decision on inadmissibility because they had not presented new elements or findings in support of the application. Finally, they may have received a positive decision on the same grounds. Quite often, these cases involved subsequent applications based on conversion to Christianity. In some cases, the court returned the matter to the Finnish Immigration Service for reconsideration after having found that the Immigration Service should not have ruled the application inadmissible, at least without arranging an asylum interview. Without an asylum interview, it is difficult for an asylum seeker to prove the genuineness or development of their religious beliefs, for example.

The report also identified several cases where the asylum seeker had failed to disclose certain sensitive grounds for asylum in previous applications. In such cases, it was assessed whether the asylum seeker had a justified reason for not disclosing the

information earlier. In some cases, the Finnish Immigration Service did not find credible the explanations given by the asylum seeker in a previous decision as to why they had not raised the issue before. On the other hand, in other cases, the subsequent application was admitted and the asylum seeker was granted a residence permit even though they had put forward a new ground for asylum that they, in principle, could have raised already at an earlier stage of the procedure.

The conclusion of this report is that the current requirements for the admissibility of a subsequent application under the Aliens Act (section 102, subsection 3 of the Aliens Act) are strict and do not fully reflect the circumstances in which the persons in need of international protection have filed the subsequent applications. Not all asylum seekers who were granted a residence permit on the basis of a subsequent application had presented new elements or findings in their subsequent application, but some of them invoked the grounds for asylum and circumstances that had already emerged in the previous asylum procedure. Section 102, subsection 3 of the Aliens Act on the conditions for the admissibility of a subsequent application should therefore more clearly and unambiguously support the safeguarding of non-refoulement in all cases, including those where the asylum seeker has not put forward new grounds for asylum or new elements.

The safeguarding of non-refoulement must also be ensured when considering admissibility. When processing a subsequent application, attention should always be paid to the grounds for asylum already presented during the previous procedure and to whether the credibility assessment has been car-

ried out appropriately in light of the information examined, the asylum seeker's situation and potential vulnerable position. A subsequent application may also be accompanied by new information relating to the previous grounds for asylum, the impact of which on the previous credibility assessment must also be assessed when a decision is made. Furthermore, the cumulative nature of grounds for asylum, i.e. the cumulative effect of the different elements on the asylum seeker's situation, must always be assessed in connection with a subsequent application.

The Finnish Immigration Service instructs that when assessing the admissibility of a subsequent application, matters to be taken into account include whether the vulnerable position has been appropriately investigated and taken into account in the credibility assessment. The Finnish Immigration Service also has various guidelines to support the investigation of subsequent applications and the identification and consideration of vulnerable position. In recent years, the Finnish Immigration Service has arranged for its interviewers special training in forensic psychology, on interviewing persons in a vulnerable position and on issues such as combating trafficking in human beings, violence against women and genital mutilation. The proportion of positive decisions on subsequent applications during the period under review may therefore reflect the increased attention paid to the examination of vulnerable position and the assessment of credibility. Legislation must allow this development to continue, and the admission of subsequent applications must not be made more difficult.

On the basis of the report, further tightening of the requirements for the admissibility of subsequent

applications should be considered disconcerting and such a change should not be made. It would lead to a risk that many asylum seekers in need of international protection would remain unidentified if their subsequent applications were not examined. For example, in the cases examined for this report, it was necessary for the realisation of the principle of non-refoulement and the respect of basic rights and liberties that the asylum seekers' subsequent applications were admitted despite them having invoked or having the opportunity to, in principle, invoke the same grounds for asylum in the past.

4.3. Issues related to credibility assessment must be resolved

The credibility assessment is not a simple task. In many cases such as those involving identity, the credibility assessment is based only on the asylum seeker's own account, which can be challenging to assess. An oral hearing before a public authority is a stressful and demanding situation for the person being heard to start with, and in most cases it also involves the use and presence of an interpreter.²⁴ The material for the report shows that there have been issues or shortcomings in the asylum seeker's credibility assessment in connection with some previous negative decisions.

²⁴ For example, talking about religious beliefs, sexuality or being a victim of violence through an interpreter can seem difficult, and there may also be differences in the skills and sensitivity of interpreters.

In practice, most of the cases where a residence permit was granted on the same grounds as those used for a previous negative decision involved different types of credibility assessments. In addition, the assessment of the credibility of new grounds for asylum based on a vulnerable position has been strict in some cases, and the asylum seeker may have received a positive decision only after the court returned the case to the Finnish Immigration Service for reconsideration.

According to the material, the key aspects when considering the credibility of an asylum seeker's grounds are a personal and detailed account, consistency and a lack of contradictions. However, according to forensic psychology studies, the ability of asylum seekers to give a detailed and personal account of their background may differ based on, for example, whether they come from an individual-centred or a community-centred culture.²⁵ Physical or mental health issues can also affect the ability to explain one's situation in a coherent and personal manner.²⁶

The material suggest that mental health issues are usually taken into account at least to some extent in the case of both positive and negative decisions. However, these health issues are not always given weight in previous negative decisions: for example, in the paragraph describing the credibility assessment, mental health issues were not always mentioned as a factor influencing the assessment. Health issues were usually taken into account in

²⁵ Jenny Skrifvars and Hedayat Selim, 'Muisti, trauma ja kulttuuri turvapaikkaprosessissa' in *Haavoittuva asema turvapaikkaprosessissa* (The Finnish Refugee Advice Centre 2022).

²⁶ In at least 14 of the cases reviewed in more detail, attention was paid to the asylum seeker's health issues in some document.

some manner. Supporting memoranda on new positive decisions could take the state of health into account as a factor explaining why the asylum seeker's account was limited.

In addition to the personal nature and the level of detail, any contradictory information provided by the asylum seeker will be taken into account when assessing credibility. Although contradictions or inconsistencies may indicate that the asylum seeker is not telling the truth, the way in which the human memory works must also be taken into account when assessing the matter. For example, people typically do not remember dates and the duration of events very well, and if a person has experienced something traumatic, they may find it even harder to recall the details of the event.²⁷

The research literature also notes that a credibility assessment may be affected by any assumptions on the part of the interviewer or decision-maker, even if these assumptions are inaccurate. For example, they could assume that asylum seekers who are truthful about their religious beliefs or sexual orientation would be willing to openly talk about their identity with the interviewer, when in fact many asylum seekers find it difficult to openly disclose such sensitive and personal information.²⁸ An account being superficial does therefore not necessarily indicate that it is implausible.

²⁷ Jenny Skrifvars and Hedayat Selim, 'Muisti, trauma ja kulttuuri turvapaikkaprosessissa' in Haavoittuva asema turvapaikkaprosessissa (The Finnish Refugee Advice Centre 2022).

²⁸ Jenny Skrifvars, Veronica Sui, Jan Antfolk, Tanja van Veldhuizen and Julia Korkman, Psychological assumptions underlying credibility assessments in Finnish asylum determinations (Nordic Psychology 2022).

The challenges of assessing credibility have also been raised by multinational human rights agreement monitoring bodies. In December 2023, the UN Committee Against Torture ruled that Finland would violate the duty of non-refoulement if it enforced a decision to deport an appealing asylum seeker. In this case, the person had applied for asylum twice on the same grounds that included torture. The Finnish Immigration Service and the courts did not find the asylum seeker's account of torture credible, partly because of some implausibility in the account and partly because of the superficial nature of the account. The asylum seeker's health issues resulting from the traumatic event were not examined during the first asylum procedure and the subsequent application was ruled inadmissible, even though the asylum seeker further clarified their state of health in connection with it. The UN Committee Against Torture found that the asylum seeker was a victim of torture and that the credibility assessment by the Finnish authorities had been overly strict.²⁹

The threshold for assessing the credibility of the asylum process should not be set too high. The assessment should comprehensively take into account the asylum seeker's personal situation, possible vulnerable position and potential impact of their cultural background. If this is not done, there is a risk that persons in need of international protection will not be identified and the duty of non-refoulement will be violated.

²⁹ UN Committee Against Torture 2023, Decision adopted by the Committee under article 22 of the Convention, concerning Communication No. 1052/2021.

4.4. An asylum procedure of a high quality supports the detection of vulnerable position

Pursuant to section 15 of the Non-discrimination Act, authorities have a duty to promote equality in their operations. This means, among other things, that public authorities must assess how their operations affect different population groups and how equality is otherwise realised in their operations, and take the necessary measures to promote equality. Authorities must also have a plan on the necessary measures to ensure the promotion of equality. In the context of the application of the Aliens Act, such measures include ensuring that procedures meet the requirements of good governance, that asylum seekers have access to advice and guidance, and that the characteristics of the person that cause them to be in a vulnerable position will be taken into account during the hearing and decision-making. This is particularly important in the asylum procedure, where an in-depth assessment of the asylum seeker's experiences and circumstances is performed and where decision-making is linked to the fundamental objects of legal protection such as the right to life and protection from being returned to a location where you would be a victim of torture or other inhumane treatment.

The identification of a vulnerable position requires particular sensitivity during the asylum procedure. The vulnerable position may not be apparent at the time of the first asylum application, in which case the vulnerable position or its impact on the asylum process cannot be taken into account even if the applicant is in fact at risk of persecution in their country of origin due to their vulnerable position.

Under the Aliens Act, the applicant has a duty to cooperate in the examination of their matter and must present the grounds based on which they consider themselves to be in danger in their country of origin. Meanwhile, the Finnish Immigration Service has a duty to ensure that the matter is examined.³⁰ When assessing and applying the duty to cooperate and the duty to examine in a particular case, in addition to the protection under the law according to section 21 and the duty to protect basic rights and liberties under section 22 of the Constitution of Finland, the authority making the decision must also take into account the duty to promote equality and, for example, the prohibition and prevention of indirect discrimination.

The detection of vulnerability may require that the asylum seeker has sufficient information about the asylum process and the circumstances that will be taken into account, as well as the grounds on which protection may be granted. In addition, the detection of vulnerability requires a safe process where the reporting of sensitive information is enabled by, for example, ensuring that the asylum seeker is assigned an interviewer and interpreter of the same sex for the asylum interview and that they can also express their wishes regarding the gender of the interpreter and interviewer. In many cases, the detection of vulnerability also requires that the asylum interviewer is capable of reacting to various indications of vulnerability. To support the identification of vulnerability, it may also be justified for the interviewer to spontaneously examine violations that are commonplace in some areas, such

³⁰ Both the duty to cooperate and the duty to examine are laid down in section 7 of the Aliens Act.

as female genital mutilation, which may not be immediately raised by an asylum seeker in their application. In the case of genital mutilation, the Finnish Immigration Service has issued guidelines that if the asylum seeker is a minor, genital mutilation should be examined at the authority's initiative if the practice is used in the asylum seeker's area of origin or population group.³¹ However, there were some cases in the research material where this was not done in the previous asylum applications and where vulnerability was not adequately examined in the previous processes.

In the vast majority of decisions, the asylum seeker first applied for asylum in 2015. Some of them went through several asylum procedures before they had the courage to invoke a particular sensitive matter in their grounds for asylum. An asylum procedure of a high quality which reinforces the sense of security and trust is essential for all the circumstances to be revealed. The research material suggests that there is room for improvement in the asylum procedure in this respect.

Procedural shortcomings and superficial interviews have emerged in asylum procedures since the summer of 2015, partly due to the pressure to improve the efficiency of the asylum process. In principle, the improvement of efficiency can be seen as a hindrance to a sufficiently detailed examination of the grounds for asylum in general and the identification of a vulnerable position in particular during the first asylum procedure, as the building of trust and a sense of security often takes time. Conditions conducive to the identification of vulnerability will

not be achieved if every effort is made to make the asylum process more efficient, thus negatively affecting the quality of the process. This will lead to a risk that the grounds for asylum will not be identified and the persons will end up either submitting a subsequent application or being returned to their country of origin where they are in fact at risk of persecution or other inhumane acts or acts that violate human dignity.

The research material for this report reveals that subsequent applications were accepted in recent decisions based on grounds or findings that were previously considered implausible. In addition, vulnerabilities that had not previously been identified were identified and residence permits issued based on them. As noted above, the Finnish Immigration Service has guidelines on subsequent applications and the identification of those in a vulnerable position, and the Immigration Service has also arranged training sessions on various themes. To ensure that those in a vulnerable position are identified and to safeguard the principle of non-refoulement, it is therefore essential that the Finnish Immigration Service has sufficient resources to continue its development work and that the Government will not prepare any proposals that would prevent the continuation of this development work.

³¹ KHO:2019:93.

5. Recommendations of the Non-Discrimination Ombudsman

The report reveals that the asylum procedure can and should be further developed to ensure that the need for international protection and the potential vulnerable position of a person is identified already in connection with the first asylum application. Identifying and clarifying the asylum seeker's vulnerable position and the need for international protection and accepting these as facts at the earliest possible stage of the asylum process will make the procedure more efficient in terms of time and more humane, as well as save the authorities' resources and reduce the need to submit subsequent applications.

However, the report shows that subsequent applications are currently a key element in the safeguarding of asylum seekers' basic rights and liberties and in ensuring that the principle of non-refoulement is followed, as the need for international protection is often not identified until at the subsequent application stage. For this reason, the threshold for subsequent applications and admission should not be raised.

5.1. Key recommendations

Subsequent applications are a key element in the safeguarding of asylum seekers' basic rights and lib-

erties, and the submission of a subsequent application should not be made more difficult. The requirements for admissibility of subsequent applications should not be further tightened: on the contrary, the current admissibility requirements should be reassessed.

To ensure that the need for international protection and the asylum seeker's potential vulnerable position are identified already during the first asylum procedure, investments in high quality of the asylum procedure from the very beginning must be made. This is in line with the asylum seeker's basic rights and liberties, and also saves the authorities' resources. No efforts to make the asylum procedure more efficient should be made without considering the impact on the quality of the procedure.

When processing subsequent applications, any new information relating to the previously raised grounds for asylum and its impact on the previous credibility assessment and the assessment of the requirements for granting international protection or a residence permit must also be assessed. In addition, the cumulative nature of grounds for asylum and the impact of a vulnerable position on the process and decision-making must always be assessed in the connection with a subsequent application.

5.2. Recommendations for different parties

Recommendations of the Non-Discrimination Ombudsman to the Ministry of the Interior and the Government:

The Non-Discrimination Ombudsman recommends that the Ministry of the Interior and the Government pay attention to and ensure the following:

1. The possibility to submit a subsequent application must be ensured also in future.

The entries in the Government Programme that would raise the threshold for the admissibility or submission of subsequent applications should not be implemented. Instead, the legislator should review the current admissibility requirements for subsequent applications and consider lowering the admissibility requirements laid down by law.

2. High quality of the procedure must be ensured when implementing measures aiming to make the asylum procedure more efficient. The Government Programme sets out the objective of making the asylum procedure more efficient. A pending legislative amendment on holding asylum interviews via a video link without the asylum seeker's consent and an entry in the

Government Programme on no longer going over the asylum interview record with the asylum seeker at the end of the interview are examples of efficiency measures that are most likely to have a negative impact on the quality of the asylum procedure. Legislative measures to improve the efficiency of the procedure that do not take into account the potential impact of the measures on the quality of the process and the subsequent consequences of past efficiency measures should not be implemented. Sufficient resources to ensure high quality of the asylum procedure must also be secured.

3. Reception services for asylum seekers who have submitted a subsequent application should not be limited.

According to the Government Programme, reception services during the processing of a subsequent application will be limited to the minimum permitted under the Reception Directive. Many reception services are essential for the identification of persons in a vulnerable position, for example, which is why reception services should not be limited. In addition, the lack of reception services would expose people to exploitation for livelihood and feed the parallel society. A limitation of reception services for persons who have submitted a subsequent application should not be based on an assumption that subsequent applications are unfounded.

4. Legislative projects should not be based on the assumption that subsequent applications are unfounded. For example, a reform of the accelerated asylum procedure has been proposed so that subsequent applications could always be processed through the accelerated procedure. In the accelerated procedure, applications may be considered manifestly unfounded, which is not a valid assumption in the case of subsequent applications, especially if the application has already met the admissibility requirements. For example, a proposed reform of the regulation on evasion of provisions on entry contains the idea that the submission of repeated subsequent applications is a sign of evasion of the provisions on entry, although this report has identified a number of situations where this is not the case. Any legislative project relating to subsequent applications must take into account the importance of subsequent applications for the realisation of asylum seekers' basic rights and liberties, and the high proportion of positive decisions.

Recommendations of the Non-Discrimination Ombudsman to the Finnish Immigration Service:

The Non-Discrimination Ombudsman recommends that the various units of the Finnish Immigration Service pay attention to, maintain and further develop their operations in relation to the following:

- 5. Placing the focus on early identification and consideration of the grounds for asylum and the circumstances of the asylum seeker.** The asylum procedure must not be made more efficient in ways that would deteriorate the quality of the procedure. Instead, investments in the procedure from the very start must be made. Examination and identification of the grounds for asylum, taking into account any vulnerable position, and realising an appropriate credibility assessment and decision-making will serve both the asylum seeker and the authorities involved in the process, as well as reduce the need for subsequent applications. For example, the atmosphere during the asylum interview and the interaction between those present is important for building trust, which contributes to the examination of the grounds for asylum. Therefore, the starting point for asylum interviews should be the participants being personally present so that an exception could be made only if the asylum seeker wishes the interview to be held remotely.
- 6. An asylum seeker's potentially vulnerable position must be taken into account at all stages of the asylum procedure.** Attention must be paid to the potential vulnerable position of an asylum seeker as soon as they arrive in the country, bearing in mind that vulnerability can also be revealed after a longer stay. A person in a vulnerable position must receive support through the reception

services – regardless of how long they reside in the country – to enable them to benefit from their rights and meet their obligations during in the asylum procedure. Attention must be paid to the potential vulnerable position and indications of vulnerability, and these must be examined at the initiative of the authority, also during the asylum interview. Training to support the identification and clarification of vulnerable position should be offered to asylum interviewers and reception centre staff also in future.

7. An asylum seeker must always have an opportunity to meet with a legal counsel before the asylum interview. Appropriate legal representation of asylum seekers is an essential part of an efficient asylum procedure that guarantees the asylum seeker's protection under the law. It also assist in the identification of vulnerabilities and the examination of the grounds for asylum early in the process. Furthermore, a medical report (see recommendation 9) and any other necessary additional information can be requested and obtained through the counsel at different stages of the process.

8. Gender-sensitivity of asylum interviews must be ensured. This can be done by booking an interpreter and interviewer of the same sex as the asylum seeker or by enquiring about the asylum seeker's wishes through the reception centre or their counsel, for example,

especially if the asylum seeker is nonbinary or identifies themselves in a way that does not match their gender on record. Once the practice has been established, the reception centre or counsel can inform the Finnish Immigration Service if the asylum seeker wishes to have an interpreter and interviewer of the opposite sex during their asylum interview.

9. The threshold for obtaining medical reports must be kept low. If a vulnerable position manifests itself as health issues, an opinion from a specialist or other healthcare professional must be obtained based on the consent of the asylum seeker and at the request of their counsel. The asylum seeker's state of health must also be taken into account when assessing their ability to recall events and report what they have experienced, and when assessing their credibility. In addition to the assessment of the grounds for international protection, a medical report must be obtained when assessing other residence permits and in cases where the best interests of a child are being assessed. If necessary, a medical report must also be obtained at the appeal stage and when a subsequent application has been submitted.

10. The rights of persons with disabilities must be respected in both procedure and decision-making. In addition to disabilities

related to various functional limitations such as mobility, sensory and intellectual disabilities, any other long-term physical or mental issues of an asylum seeker may need to be considered a disability. The UN Convention on the Rights of Persons with Disabilities constitutes directly applicable legislation in Finland and is binding on the authorities. The Finnish Immigration Service must assess on its own initiative the need for reasonable accommodation without the person with a disability needing to request the accommodation if the asylum procedure has otherwise revealed that the asylum seeker has a disability that may require accommodation. The functional limitations of a person with a disability in relation to their living environment can be assessed based on expert statements, but it should be kept in mind that the person is best placed to say how the functional limitations affect their life. Asylum seekers with a disability must be identified and the realisation of their rights taken into account both during the asylum procedure and in decision-making.

11. Research data on memory, narrative patterns and perception must be taken into account during asylum interviews and in decision-making. In addition to the asylum seeker's vulnerable position, torture, other experiences of violence and state of health, the asylum seeker's background as a whole,

such as their level of education, sphere of life and other experiences, should be taken into account in the asylum interview when assessing the asylum seeker's ability to recall details, perceive matters and describe events. Research literature has identified matters related to memory, narrative patterns and perception that should be taken into account when assessing the credibility of an asylum seeker's account, and training for asylum interviewers on the possible effects of trauma, vulnerable position and culture on an asylum seeker's memory and the manner in which they describe their experiences should be arranged also in future.³² The consideration of the above factors and their actual impact on the credibility assessment should also be clearly stated in the grounds for all negative decisions.

12. The threshold for credibility assessments needs to be reassessed. Based on the findings of the report, the threshold for assessing credibility has sometimes been overly high. This applies to cases in which the asylum seeker's religious beliefs were not considered credible in a previous application,

³² Jenny Skrifvars and Hedayat Selim, 'Muisti, trauma ja kulttuuri turvapaikkaprosessissa' in Haavoittuva asema turvapaikkaprosessissa (The Finnish Refugee Advice Centre 2022); Hedayat Selim, Julia Korkman, Peter Nynäs, Elina Pirjatanniemi and Jan Antfolk, A review of psycho-legal issues in credibility assessments of asylum claims based on religion (Psychiatry, Psychology and Law 2023); Ilona Blumgrund, Hilikka Lydén and Alina Leminen, Migrin teologia turvapaikkapäätösten valossa (Diakonian Tutkimus 2:2022).

but were deemed credible in connection with a subsequent application, for example. In addition, the fact that a lack of a safety network, sexual orientation or serious violations of the asylum seeker's rights were not considered credible until in connection with a subsequent application or an appeal show that the threshold is extremely high also in the case of asylum seekers in a vulnerable position. The Finnish Immigration Service must ensure with its guidelines and by means of training that the threshold for a credibility assessment does not become excessively high.

13. The threshold for admissibility must be kept adequately low. Even though asylum seekers are instructed to state all their asylum grounds already during the first asylum interview, it is only human that they may still fail to bring up some sensitive, shameful or difficult issues. In addition, despite the instructions asylum seekers may not always have the courage, ability or understanding to tell everything that has happened to them. The threshold for the admissibility of subsequent applications must be kept adequately low when assessing new grounds for asylum and new elements or vulnerabilities relating to previously reported grounds.

Other recommendations

14. Authorities must promote equality in their operations. In the asylum process, the authorities must fully implement their duty under section 5 of the Non-discrimination Act to promote equality and prevent the risks of discrimination in their operations. The plan for the promotion of equality must include objectives that are proportionate to the authority's operations.

15. Uninformed and distorting debate on subsequent applications must be avoided. Such discourse is likely to fuel negative attitudes, discrimination and racism.



YHDENVERTAISUUSVALTUUTETTU
DISKRIMINERINGSOMBUDSMANNEN