

ANNUAL REPORT 2015

NON-DISCRIMINATION OMBUDSMAN

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NON-DISCRIMINATION OMBUDSMAN

The task of the Non-Discrimination Ombudsman is to promote equality and prevent discrimination. The Non-Discrimination Ombudsman is an autonomous and independent authority that belongs to the administrative branch of the Ministry of Justice.

You may refer to the Non-Discrimination Ombudsman if you have experienced or observed discrimination on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics. The Ombudsman also works towards improving the rights, circumstances and status of groups at risk of discrimination. The Ombudsman further monitors the removal of foreign nationals from the country and is the National Rapporteur on Trafficking in Human Beings.

What the Non-Discrimination Ombudsman actually does in practice involves counseling, investigating individual cases, promoting conciliation, providing training, gathering information, influencing concerning legislation and the practices of the authorities, and providing legal assistance. The duties and rights of the Ombudsman are provided for in the Non-Discrimination Act and the Act on the Non-Discrimination Ombudsman.

The Ombudsman's key tool is the recently revised Non-Discrimination Act, which entered into force on 1 January 2015.

Discrimination related to gender or gender identity belongs to the domain of the Ombudsman for Equality.

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Preface: A YEAR OF CHANGE

The long-awaited and prepared Non-Discrimination Act entered into force on 1 January 2015, taking non-discrimination to a new level: stronger obligations to promote equality and new grounds for discrimination create a significant improvement in the observance of fundamental rights. The Act clearly expanded the authority of the Non-Discrimination Ombudsman to intervene in cases of discrimination. Following the legislative amendment, the Ombudsman's workload and responsibility increased as expected, since one of the Act's key objectives was to strengthen the legal protection of individuals. Although the Act still leaves room for improvement, it was worth waiting for.

In all respects, the year 2015 was one of major changes at the Office of the Non-Discrimination Ombudsman. In addition to the expansion of her duties, the Non-Discrimination Ombudsman was transferred from the administrative branch of the Ministry of the Interior to that of the Ministry of Justice, as were the Ombudsman for Equality and the Ombudsman for Children. Since operating principles, systems and practices differ from ministry to ministry, this transfer required adaptation and a learning process, particularly among office personnel.

The previous Ombudsman's five-year term expired and the new Ombudsman took office in May 2015. The new term got off to a good start in the form of recruitments, since the reform of the Non-Discrimination Act brought us five new positions. The new employees were a long-awaited addition to our resources: their contribution is indispensable in processing the much higher number of discrimination complaints. The number of complaints filed with the Non-Discrimination Ombudsman in 2015 increased by 73 per cent, compared to those

filed with the former competent authority, the Ombudsman for Minorities, in 2014.

The new Act and expanded powers required a reassessment of the Ombudsman's operations, as well as setting out the related principles, strategy and priorities. This work was initiated in the summer of 2015 as a joint effort of the Office, and the Non-Discrimination Ombudsman's strategy for 2016–2020 was approved at the end of 2015.

The elimination of discrimination forms the core of the Ombudsman's activities. This involves contacts with individuals and organisations, and the investigation of complaints about discrimination. If it is established that discrimination occurred, the Ombudsman intervenes by providing advice or promoting reconciliation in order to end the discrimination, as well as supporting the victim's right to compensation. Ensuring the legal protection of those discriminated against is often a complex process, requiring the Ombudsman to issue a statement or refer the case to the National Non-Discrimination and Equality Tribunal. The increasing number of discrimination complaints also requires the Ombudsman to develop its operations in order to identify, and focus on, discrimination cases that have wider implications.

The Constitution of Finland ensures equal rights for all and thus requires that equality be taken into account when drafting legislation. The Non-Discrimination Ombudsman seeks to influence legal drafting and enactment in order to highlight the fundamental and human rights perspective and for the evaluation of equality impacts. The concept of equality impact assessment remains relatively unknown compared to gender impact assessment. Since ministries draft statutes under liability



for acts in office, they must take account of the duty of authorities to foster equality as stated in the Non-Discrimination Act. Assessment of equality impacts at the earliest possible stage should be made an integral part of legal drafting. It would also be advisable to evaluate equality impacts at both ministry and municipal level in connection with annual budget preparation.

In addition to discrimination, the Ombudsman has a long tradition of responding to hate speech against various minorities. It is important that this tradition be continued. In 2015, the number of asylum seekers arriving in Finland, as in many other countries, was significantly higher than in previous years. This intensified various forms of overreaction, including hate speech. In addition to asylum seekers, hate speech was directed towards people helping them and national Finnish ethnic minorities. When this debate began in 2015, the general view was that anything that is not criminalised cannot be considered hate speech, and nobody admits to being a racist. However, intervening in hate speech began to gain more supporters during the year. Traditional media are also redefining their role in the polarised atmosphere. While some chief editors swear by responsible journalism, some journalists ride on people's fears and prejudices. Due to this polarised atmosphere and increased hate speech, we must continue to intervene in all types of hate speech. Furthermore, the police and public prosecutors must show through their actions that threats, harassment and hate crime are treated as serious offences. There must be no room for hate speech in the media, political decision-making or human encounters, whether in the social media or on the street.

At the time of writing this preface, exactly a year has gone by since I began my term as Non-Discrimination Ombudsman. Unfortunately, from a human rights perspective, the social situation in Finland and elsewhere in Europe has become increasingly challenging. A year ago, I envisaged the future as follows: "I am sure that everybody supports non-discrimination. However, there are fears that the difficult economic situation will adversely affect the realisation of non-discrimination. In addition to looking for savings, we should think about how everyone could fully participate in building our society." Over the last few months, these concerns have not faded, on the contrary. The right to equality and non-discrimination among individuals seems to be overshadowed by factors such as the Government's key projects and savings affecting the rights of the elderly, schoolchildren, students, asylum seekers and persons with disabilities. However, showing respect for others, viewing diversity as an asset and promoting a society that is inclusive for all provides the best starting point for Finland as a strong welfare state.

Helsinki, 15 May 2016

Kirsi Pimiä

MORE EXTENSIVE PROTECTION AGAINST DISCRIMINATION

The Non-Discrimination Act enables intervention in various types of discrimination. In international comparisons, our legislation provides exceptionally comprehensive protection against discrimination. The prohibition of discrimination has been made as comprehensive as possible in the Non-Discrimination Act. In addition to characteristics beyond one's own control, such as age, other individual features such as opinions are protected. Such protection is further complemented by the fact that all personal characteristics are equally protected against discrimination, even if they are not specifically mentioned in the Act.

The Non-Discrimination Act covers nearly all public or private activities, excluding those pertaining to private or family life or the practising of religion. Thus, the prohibition of discrimination extends to areas such as organisational activities, housing companies and the maintenance of order by the police.

The Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal can intervene in all cases of discrimination covered by the Act, excluding working life. Intervening in cases of discrimination in working life remains the responsibility of the occupational health and safety authorities.


One of the weaknesses of the Act is that the consequences of discrimination vary, depending on who is guilty. Discrimination victims have the right to financial compensation only if the perpetrator is an authority, employer, training provider, or the provider of goods or services. Another major constraint is that compensation must be claimed through a district court; the National Non-Discrimination and Equality Tribunal cannot order compensation to be paid. According to the Constitutional Law Committee (PeVL 31/2014 vp), the Tribunal's right to or-

der compensation should be reviewed. Claiming compensation via a district court places the discrimination victim at high risk of having to pay its adversary's legal costs, which could amount to thousands or even tens of thousands of euros, if the victim loses the court case.

Under the new Act, the prohibition of discrimination was extended to cover more grounds for discrimination than before in various walks of life, while attempting to retain a strong definition of discrimination. For this reason, it was important that the definition, as put forth in the Government proposal, was tightened up by Parliament. Different treatment on the basis of the personal characteristics of an individual is prohibited, unless such treatment is based on legislation or has an acceptable aim in terms of fundamental and human rights. Even then, a prerequisite for different treatment is that the objective cannot be achieved by means milder than legislation. Thus, the law stipulating age limits restricting the purchase of alcohol does not constitute discrimination.

The fact that everyone is treated in the same way can constitute prohibited indirect discrimination. Seemingly equal treatment constitutes indirect discrimination if it affects a particular group. The situation must be assessed as a whole: does the treatment have a legitimate aim and are the means applied appropriate and necessary? For example, the fact that the police intervene in begging, which is mainly carried out by the Roma arriving in Finland from abroad, may constitute indirect discrimination, depending on the acceptability of the means and goals of intervention.

The new Non-Discrimination Act has substantially increased the opportunities to respond to cases where a person is treated less favourably than others due to his or her personal characteristics. In the application of the

A large, solid blue speech bubble graphic is centered on the page. It has a rounded top and a small tail pointing downwards. Inside the bubble, the text "For an action to qualify as discrimination, a person must have been treated worse than another person in a comparable situation because of one or more personal characteristics specified in the Act." is written in a white, sans-serif font, arranged in six lines.

For an action to qualify as discrimination, a person must have been treated worse than another person in a comparable situation because of one or more personal characteristics specified in the Act.

law, the main focus is on the fact that authorities and employers – as well as the providers of education, training, goods and services – do not discriminate against anyone. At least so far, the Non-Discrimination Act has had no impact on hardened attitudes in society, which is reflected in the greater number of violations against the safety and personal integrity of people belonging to minorities. However, the Act also prohibits discrimination and harassment between private persons.

PROHIBITED GROUNDS FOR DISCRIMINATION

In anti-discrimination work, the concept of 'ground for discrimination' is often used. On what grounds has a person been discriminated against? The type of legal protection varies depending on the grounds for discrimination. Multiple discrimination means that someone is discriminated against for more than one reason. What then are the prohibited grounds for discrimination? The Non-Discrimination Act prohibits discrimination on the following grounds: age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics.

Discrimination related to gender and gender identity falls within the remit of the Ombudsman for Equality. Discrimination in working life is the responsibility of the occupational health and safety authorities.

In a situation where a person feels they have been discriminated against, it is essential to define the grounds on which discrimination has occurred. For an action to qualify as discrimination, a person must have been treated worse than another person in a comparable situation because of one or more personal characteristics specified in the Act. However, the mere prohibition of different treatment is not enough to achieve de facto equality,

because people's needs are different for reasons such as disability, age, ethnic origin, religion or family relations.

The Non-Discrimination Act assumes that the various grounds for discrimination are treated by law in the same way. The main principles of the prohibition of discrimination are that if a person is treated less favourably than others, this constitutes discrimination, while treating everyone in a similar way is not normally regarded as discrimination. However, with regard to persons with disabilities, similar treatment is not enough. Instead, operations must be accommodated, if necessary, to ensure that the disabled have the same opportunities to obtain services, education or employment.

In practice, the obligation to make reasonable accommodations means concrete technical changes made at the request of a disabled person, such as wheelchair ramps or lighting modifications for the needs of visually impaired persons. However, the interpretation of the UN Convention on the Rights of Persons with Disabilities must also be taken into account in the application of the Non-Discrimination Act. This means that it must be possible to remove all obstacles to the de facto realisation of equality. In its first decisions, the National Non-Discrimination and Equality Tribunal has stated, *inter alia*, that when authorities make benefit decisions, they must take account of the obligation to make reasonable accommodation for disabled persons.

According to the transitional provisions of the Non-Discrimination Act, a person with disabilities can apply for compensation from 1 January 2017 onwards if a private service provider refuses to make reasonable accommodation for him or her.

ANYONE CAN BECOME A VICTIM OF DISCRIMINATION

Responding to discrimination and promoting equality are two sides of the same coin. Responding to discrimination typically means investigating an individual case of discrimination in retrospect and claiming compensation on behalf of the victim for the infringement of his or her rights. Promoting equality is about looking ahead and trying to change operating models so that people have equal opportunities to participate in everyday life, despite individual differences.

The three main pillars of effective intervention against discrimination include people's general awareness of their rights, easy access to assistance in cases of discrimination, and dissuasive sanctions for discrimination.

AWARENESS OF ONE'S OWN RIGHTS

In the experience of the Non-Discrimination Ombudsman, people in Finland are fairly well aware of their rights. This view is also supported by the 2015 Eurobarometer survey, in which 78 per cent of the respondents in Finland believed that they would know their rights if they encountered discrimination or harassment. Among EU member states, the average was 45 per cent. The Non-Discrimination Ombudsman's customer statistics for 2015 show that awareness of rights varies among different groups and is the lowest among the most vulnerable groups.

On the other hand, good knowledge of the law does not automatically mean that those encountering discrimination report their experiences or observations.

LOW-THRESHOLD SERVICES

The purpose of authorities such as the Non-Discrimination Ombudsman is to lower the threshold for seeking help and advice in cases of discrimination. Work remains to be done in lowering this threshold. Public awareness of the Non-Discrimination Ombudsman's must be markedly improved in order to achieve a similar level of awareness and trust among citizens as in countries such as Sweden. According to the Eurobarometer, respondents in Finland prefer to report discrimination to the police. While confidence in the police and the criminal process is naturally a good thing, from the viewpoint of an individual victim of discrimination the protection provided by the Non-Discrimination Act is more extensive than that provided by the Criminal Code, for reasons such as the reverse burden of proof.

SANCTIONS ON DISCRIMINATION

It is easy to understate the seriousness of discrimination, particularly if it affects someone else. People experience discrimination in different ways and its individual effects vary. Discrimination is always a serious violation of fundamental and human rights, because the subject of the infringement is not only the individual but also the group to which he or she belongs. This must also be reflected in the sanctions imposed for discrimination.

According to Section 27 of the Non-Discrimination Act, a court handling a matter concerning the application of the Act must reserve an opportunity for the Non-Discrimination Ombudsman to be heard insofar as the matter falls under the authority of the Ombudsman. Furthermore, the prosecutor must reserve an opportunity for the Ombudsman to be heard prior to bringing charges for an offence. In her statements issued to courts of law and

The year gone by and the number of complaints filed with the Non-Discrimination Ombudsman have shown that the extension of discrimination protection was necessary. Although the Act entered into force only a year ago, all prohibited grounds of discrimination have been covered by customer complaints to the Ombudsman. The idea that only minorities can be discriminated against is fading over time. Anyone can become a victim of discrimination on the basis of factors such as age. At the

Even in a democratic society such as Finland, the opportunities of minority groups to influence politics and public decision-making are often inadequate. The discrimination protection included in the Finnish Constitution is a trump card that prevents the making of decisions that might weaken the position of minority groups. However, we also need the systematic and goal-oriented promotion of equality in order to improve the status and rights of minorities.



- Improves people's awareness of and access to rights.
- Enhances the social engagement of people of all kinds. Access to activities such as politics or family services is easier if the activities are originally designed to suit all.
- Enables the more effective transfer of the experiences of diverse groups of people into decision-making.
- Prevents discrimination and improves the ability of various operators to intervene in cases of discrimination.
- Reduces the need for special services, which in turn reduces the feeling of social exclusion.

– EQUALITY CALLS FOR ACTION

PROMOTING EQUALITY IMPOSES OBLIGATIONS ON THE AUTHORITIES, EMPLOYERS AND TRAINING PROVIDERS

What should be done to achieve equal conditions and practices? Information is needed as the basis for change, including information on discrimination experienced in places such as schools and workplaces, structural barriers to equality and the expectations of people vulnerable to discrimination. Mapping these makes invisible problems visible and raises awareness of them which . Based on such information, measures can be planned, scheduled and implemented in order to improve the situation.

The Non-Discrimination Act obliges private service providers to draw up an equality promotion plan but only in their capacity as employers. The Non-Discrimination Ombudsman recommends that businesses would also



- Increases employees' experience of fairness which improves job satisfaction and commitment.
- Attracts people with a more diverse range of skills.
- Reduces the need to make accommodations afterwards which saves on costs.
- Increases opportunities for success for both the company and its employees as latent structures that create inequality and outright discrimination shut out potential talent.
- Attracts a more versatile customer base.
- Creates and strengthens a positive image and prevents reputation risks.

Tip

THE OMBUDSMAN AS A PROMOTER OF EQUALITY

One of the tasks of the Non-Discrimination Ombudsman is to promote the realisation of equality in general. This may include measures such as campaigns to increase knowledge of the law, cooperation with various operators to solve an individual problem, or issuing recommendations on flaws that have arisen.

One of the flaws that has required long-term equality promotion measures is the problem experienced by foreigners living permanently in Finland in verifying their identity, for example when using banking services. Over the years, the Ombudsman has received numerous complaints about the fact that banks do not provide online banking codes to foreigners who have arrived in Finland without a reliable identity document. This has significantly hampered their daily lives and prevented the use of electronic services, which require strong authentication.

For years, the Ombudsman tried to solve this problem by actions such as building communication between the various authorities and financial sector operators. Finally, the Ministry of the Interior appointed a working group to prepare a revision of the Identity Card Act. The Ombudsman issued a statement on the working group's proposal in December 2015. The statement paid particular attention to the fact that, according to the proposal, a foreign citizen's identity card would not be granted to persons holding a temporary residence permit. The Ombudsman stated that the proposal should be changed so that persons residing in the country on the basis of temporary residence permits are entitled to a foreign citizen's identity card. The Government proposal was amended in this respect and is now being examined by Parliament. If this proposal is approved by Parliament, persistent work lasting more than ten years will finally bear fruit and the aforementioned problems will be solved.

The Non-Discrimination Ombudsman RESPONDS TO DISCRIMINATION

The Non-Discrimination Ombudsman has broad discretion to decide how to tackle discrimination, both at general level and in individual cases. Measures taken by the Ombudsman depend on the general significance of the matter to society on the one hand, and the victim's need for help on the other. The Ombudsman has an extensive toolbox of measures for tackling suspected cases of discrimination and making those guilty of discrimination accountable. The scale of measures ranges from resolution of cases and disputes to the promotion of reconciliation and defending the victims' rights as their legal aid attorney in courts of law.

The new Non-Discrimination Act significantly expanded the Non-Discrimination Ombudsman's mandate. The Ombudsman has the opportunity to respond to discrimination by, for example, requesting clarifications, taking the initiative in promoting reconciliation and taking discrimination cases to the National Non-Discrimination and Equality Tribunal or courts of law for resolution. In addition to these, the new non-discrimination legislation has provided the Ombudsman with two new instruments: the opportunity to give statements to prosecutors and courts in individual cases of discrimination, and the opportunity to carry out inspections in the premises of authorities, businesses and educational institutions. These new forms of activity complement the Ombudsman's opportunities to respond to discrimination effectively.

INFLUENCING THE INTERPRETATION OF NON-DISCRIMINATION LEGISLATION

Precedents are needed on the interpretation of the new Non-Discrimination Act. Prosecutors and courts of law are under obligation to hear the Non-Discrimination Ombudsman in discrimination cases. It was the express intention of the legislature that the Ombudsman have the opportunity to assess cases and thereby influence the development of case law in discrimination matters, both under civil and criminal law. During her first year in the post, the Ombudsman has actively made use of her opportunity to respond to discrimination. Similarly, it is important that the Ombudsman refers cases, which she regards as being significant, to the National Non-Discrimination and Equality Tribunal and to the courts.

Non-Discrimination Act Section 27 §

HEARING OF THE NON-DISCRIMINATION OMBUDSMAN

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





Meanwhile, there is cause for concern in that only a modest proportion of discrimination cases affecting various minority groups in areas such as recruitment are submitted to occupational health and safety authorities for consideration.

In 2015, the Supreme Court issued an important precedent (KKO:2015:41) in a work discrimination offence committed against the journalist Johanna Korhonen. From the viewpoint of case law and the interpretation of non-discrimination legislation, the key message from the Supreme Court judgment was that “without weighty reasons, there are no grounds for interpreting the prohibition of discrimination differently in different areas of the legal order”. In practice, this means that application of the Criminal Code too must rest on how similar

One of the main weaknesses of the new non-discrimination legislation is the fact that the Ombudsman has limited powers in matters related to working life. This also affects the Ombudsman's authority, by virtue of Section 27 of the Non-Discrimination Act, to issue statements in individual cases related to working life, because the Ombudsman cannot directly take a position on whether the employer has violated the discrimination prohibition stipulated in the Non-Discrimination Act. However, the Ombudsman can draw attention to matters which she deems important to the development of case law, including matters related to working life in a general level, and has also done so.

Meanwhile, there is cause for concern in that only a modest proportion of discrimination cases affecting various minority groups in areas such as recruitment are submitted to occupational health and safety authorities for consideration.

The Non-Discrimination Ombudsman responds to discrimination

THE NON-DISCRIMINATION OMBUDSMAN AS A LEGAL AID ATTORNEY

Due to her limited resources, the Non-Discrimination Ombudsman rarely exercises her right to provide legal aid and act as a legal aid attorney for a victim of discrimination. The Ombudsman carefully selects the cases in which she acts as a legal aid attorney, based on whether the case has wider implications for society and whether there is a need to obtain a precedent on the interpretation of the law.

PROMOTION OF RECONCILIATION

Based on the earlier Non-Discrimination Act, the Non-Discrimination Ombudsman already had the opportunity to take measures to promote reconciliation between the victim and perpetrator of discrimination. This task has been expressly mentioned in the revised Act. The Ombudsman considers this a key instrument with respect to securing the victims' rights. Practical experience shows that an active role played by the Ombudsman in achieving reconciliation often leads to a situation in which the discrimination victim and the discriminating party – after discussions, an apology and possible compensation – can put the matter behind them. Thanks to reconciliation, the discriminator is more motivated to change their behaviour than in a situation where the dispute is taken to court.

Reconciliation is also a solution worth advocating in cases of discrimination. The process is usually faster, cheaper and easier from the viewpoint of both the discriminator and the victim. At the initial stage of the discrimination complaint process, the Non-Discrimination Ombudsman investigates whether there are prospects for achieving reconciliation. In some cases, the parties fairly easily reach agreement between themselves after the Ombudsman has initiated reconciliation, while in others the parties conclude a written reconciliation agreement after a longer process and active measures by the Ombudsman. Such an agreement usually includes a statement that discrimination has taken place, as well as an apology, compensation and a commitment to non-discrimination in the future. In some cases, the discriminating party, such as a business or authority, also commits itself to taking specific measures and providing guidelines for its organisation in order to promote equality and prevent discrimination. The discriminating parties have included both authorities and businesses, as well as private persons who have acted as goods or service providers.

The Non-Discrimination Ombudsman finds it positive that reconciliation was conceptually separated from conciliation in the Government Bill for the Non-Discrimination Act. Although the targeted end result of conciliation is very similar to that of reconciliation measures taken by the Ombudsman, the established operating model for the former deviates in some respects from that of the latter.



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CASE EXAMPLE: FERTILITY TREATMENT MUST BE AVAILABLE ON EQUAL GROUNDS IN PUBLIC HEALTH CARE

In November 2015, the Non-Discrimination Ombudsman took a case, in which a woman who is in a relationship with another woman was denied access to fertility treatment under public health care, to the National Non-Discrimination and Equality Tribunal. The Ombudsman considers this discrimination as prohibited by the Non-Discrimination Act.

The woman complained about her case to the Non-Discrimination Ombudsman, describing her feelings as follows: “It feels wrong to be unequal, as if I were a second class citizen. Why do I need to fight for my right to have a family?”

The decision to refuse fertility treatment was based on the policy outlined by the medical directors of university hospitals, according to which donated gametes cannot

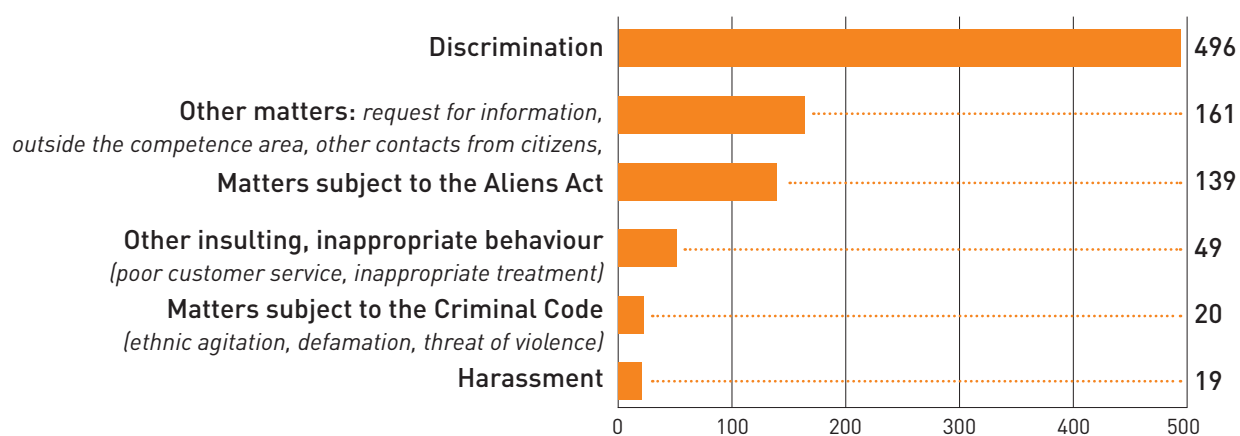
be used in fertility treatment provided by public health care due to the lack of resources. The Non-Discrimination Ombudsman considers the allocation of public resources in a discriminatory manner to be an unacceptable way of solving such a problem. From the viewpoint of the Non-Discrimination Act, a more sustainable solution would be to assign all persons needing fertility treatment to a treatment queue, rather than to exclude some persons from treatment altogether.

Furthermore, according to the medical directors' policy definition, fertility treatment should be provided on medical grounds only. However, this is not based on the Act on Assisted Fertility Treatments from 2007, which affirmed the right of single women and female couples to receive fertility treatment.

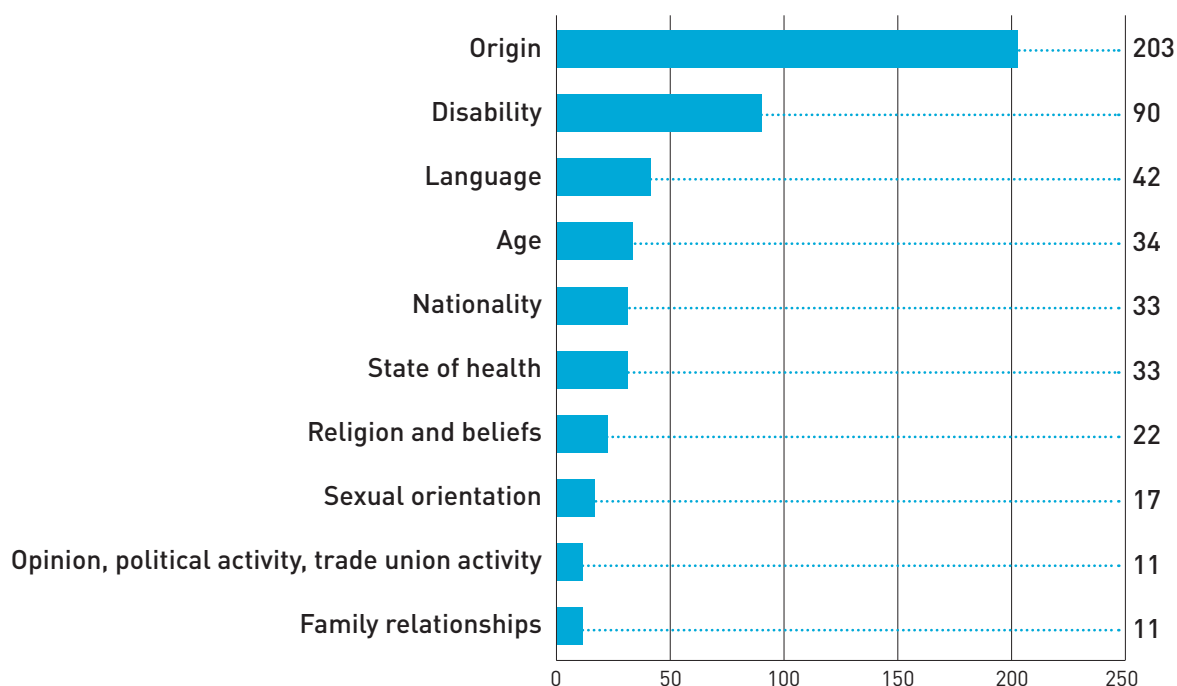
The National Non-Discrimination and Equality Tribunal has not yet issued its resolution in respect of this case.

Number of complaints to the Non-Discrimination Ombudsman on the increase

CUSTOMER CASES



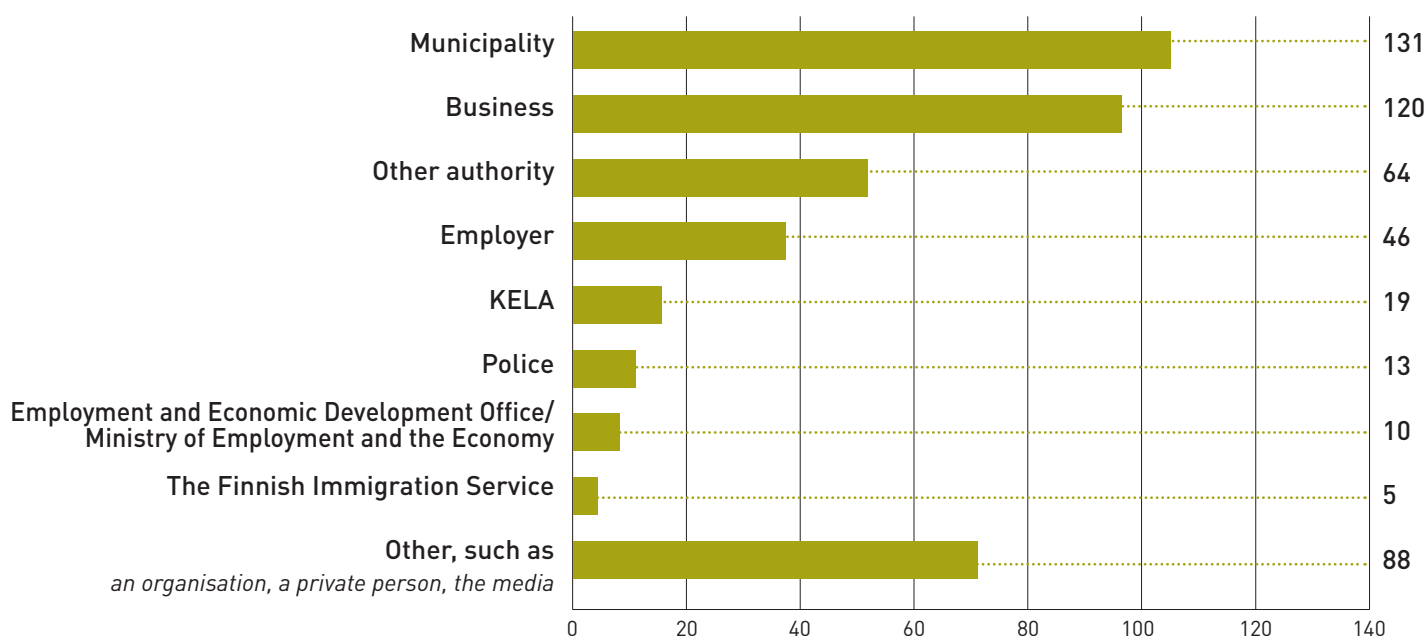
THE GROUNDS FOR DISCRIMINATION IN CUSTOMER CASES PROCESSED



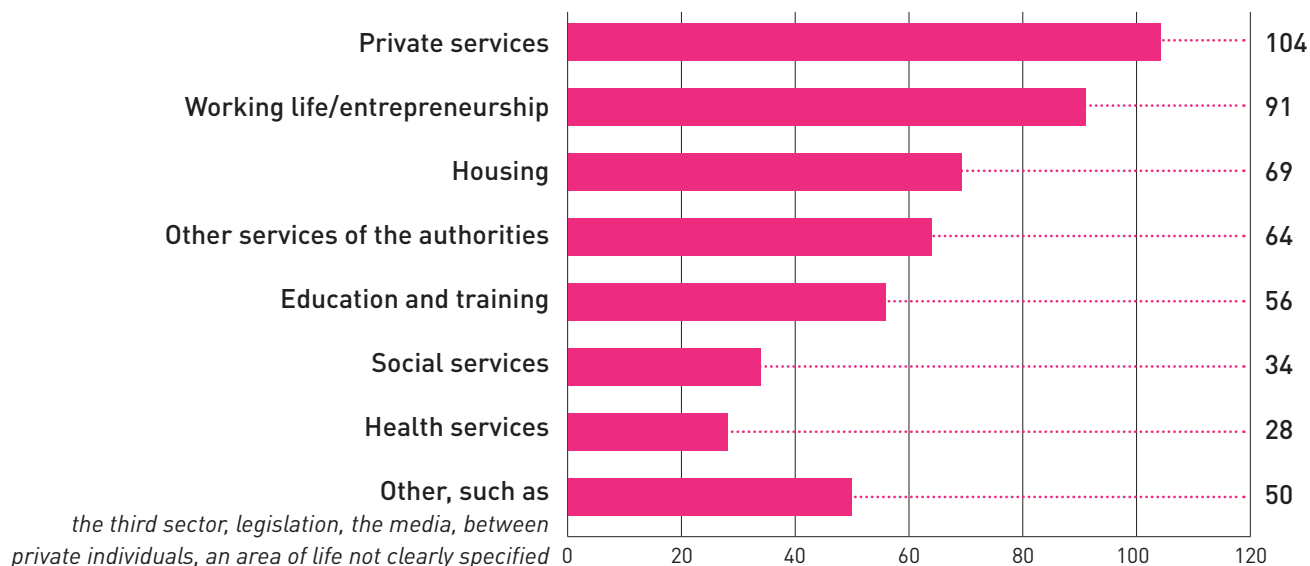
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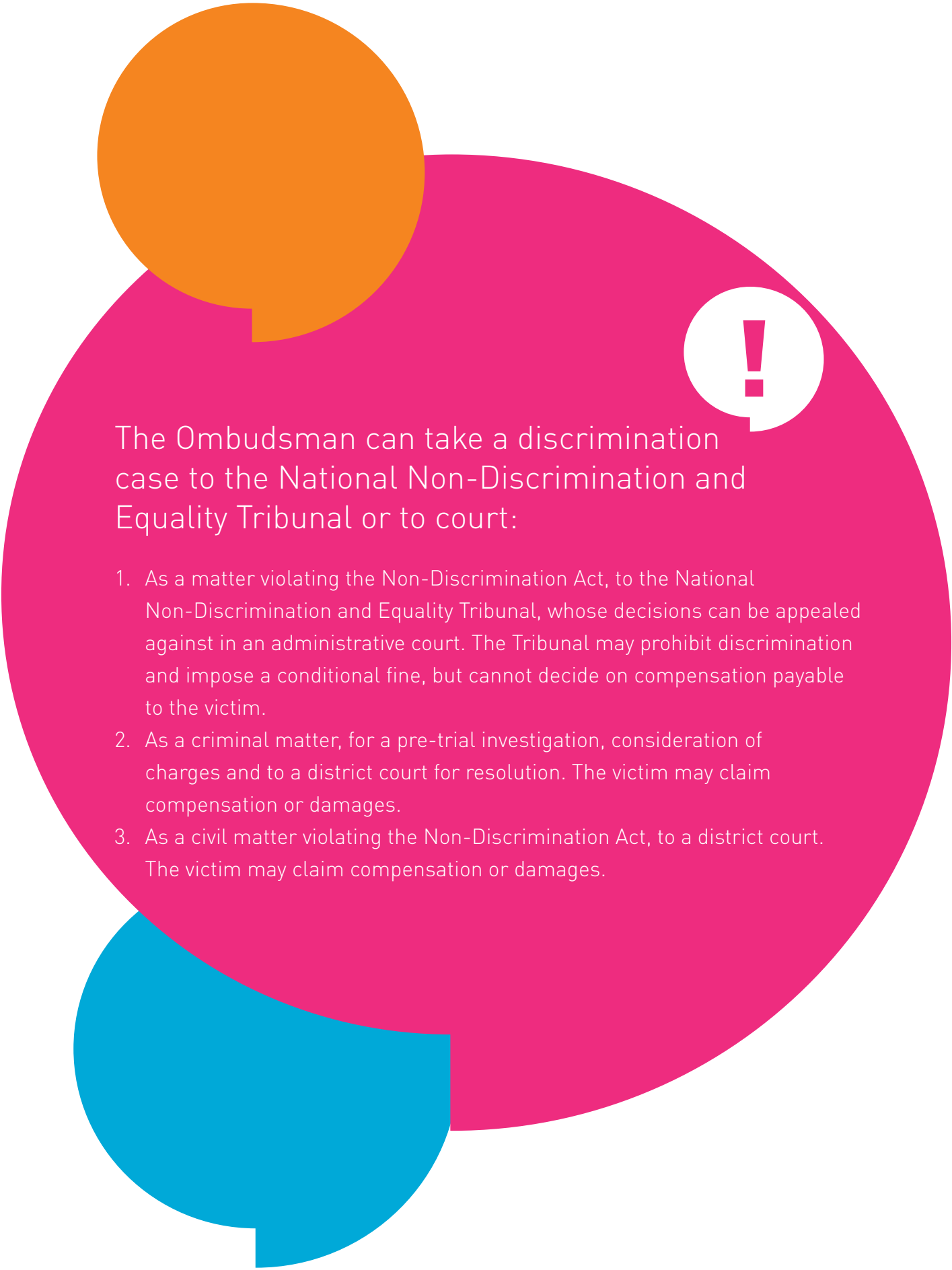
Number of complaints to the Non-Discrimination Ombudsman on the increase – discrimination against persons with disabilities shows clearly in statistics

PARTY SUSPECTED OF DISCRIMINATION



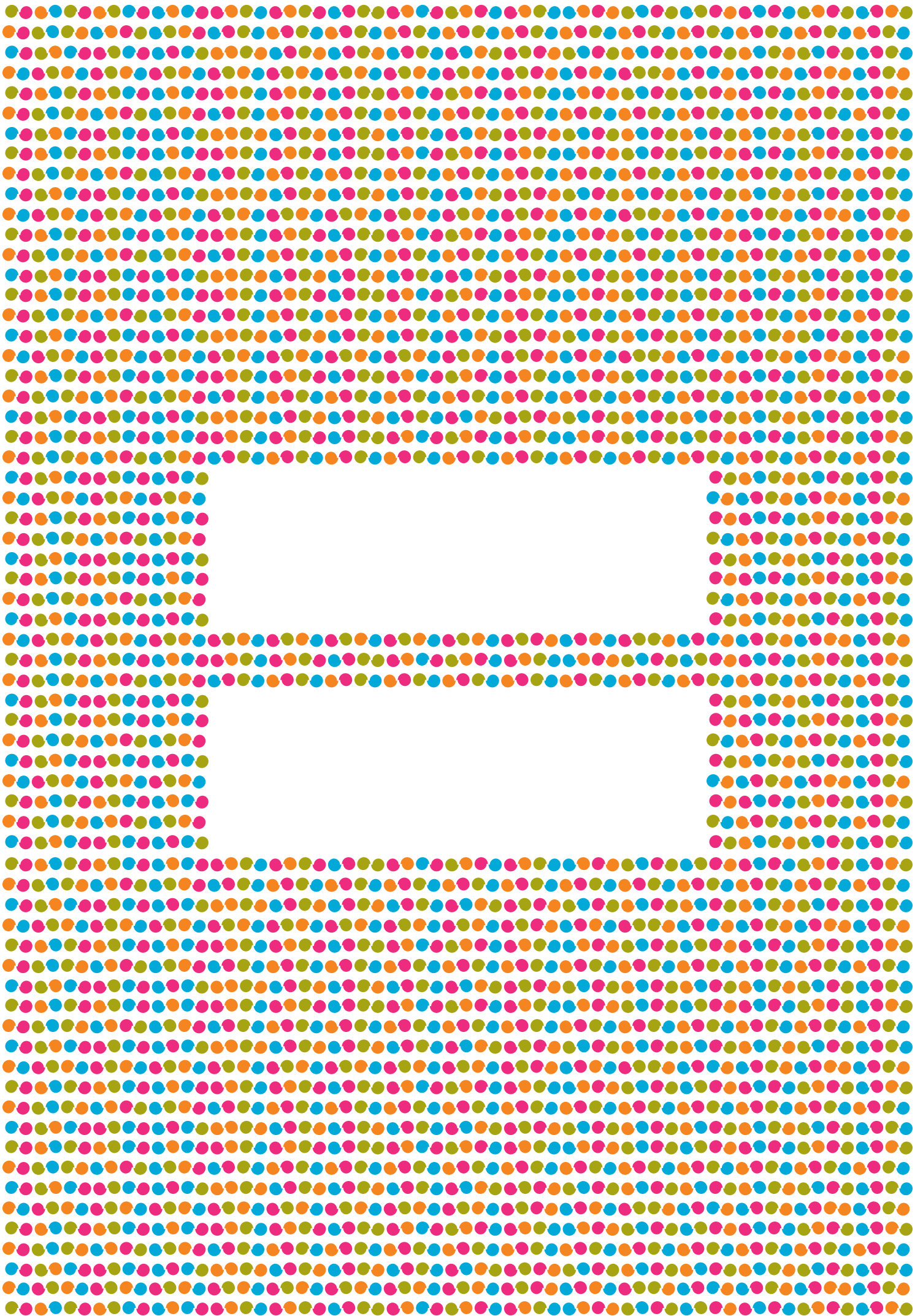
DISCRIMINATION IN DIFFERENT AREAS OF LIFE





The Ombudsman can take a discrimination case to the National Non-Discrimination and Equality Tribunal or to court:

1. As a matter violating the Non-Discrimination Act, to the National Non-Discrimination and Equality Tribunal, whose decisions can be appealed against in an administrative court. The Tribunal may prohibit discrimination and impose a conditional fine, but cannot decide on compensation payable to the victim.
2. As a criminal matter, for a pre-trial investigation, consideration of charges and to a district court for resolution. The victim may claim compensation or damages.
3. As a civil matter violating the Non-Discrimination Act, to a district court. The victim may claim compensation or damages.



National Rapporteur on Trafficking in Human Beings:
TRAFFICKING IN HUMAN BEINGS
IS CHANGING

The Non-Discrimination Ombudsman is the National Rapporteur on Trafficking in Human Beings. The Rapporteur monitors action against human trafficking in Finland, human trafficking at large, compliance with international obligations and the effectiveness of national legislation. The Rapporteur issues suggestions, recommendations, statements and advice, and monitors the realisation of the rights of victims. The Rapporteur may also provide legal counselling and, in exceptional cases, assist victims in court cases. The National Rapporteur on Trafficking in Human Beings provides Parliament with an extensive report with recommendations every four years and reports annually to the Government as part of the annual report of the Non-Discrimination Ombudsman. Below are the Rapporteur's observations on anti-trafficking work in Finland in 2015.

PRE-TRIAL INVESTIGATION AUTHORITIES ARE INCREASINGLY FAMILIAR WITH HUMAN TRAFFICKING

The pre-trial investigation of human trafficking crimes has improved and the related expertise has increased. Over the years, certain pre-trial investigation units and prosecutor's offices have accumulated experience in the investigation and prosecution of human trafficking crimes. This is reflected in the improved realisation of criminal liability and the rights of victims. Authorities in these localities understand that a successful pre-trial investigation and the fulfillment of victims' rights require close cooperation between the pre-trial investigation, the system for victim assistance, NGOs, social workers and labour inspection. Sexual abuse affects the victim's ability to act in a criminal process due to the consequences

of abuse, the often serious psychological trauma involved and the victim's circumstances. Better account than before is being taken of this in court cases. A trauma or a vulnerable position has an effect on the victim's resources, memory, motivation and overall ability to act in a pre-trial investigation and trial.

The National Rapporteur on Trafficking in Human Beings has noted that the realisation of criminal liability and protection of the victim's rights are often dependent on where in Finland the crime has been committed and who investigates the offence. The quality of pre-trial investigations is regrettably uneven. In some areas, human trafficking cases are practically not investigated at all. This may be due to the fact that human trafficking is not identified everywhere, or that there are no skills for investigating it. Pre-trial investigation authorities do not always guide the injured parties to the system of assistance for victims of human trafficking, or to other support services for crime victims. In her report for 2014, the National Rapporteur on Trafficking in Human Beings highlighted lack of knowledge and skills and the scarcity of trained and specialised resources, which continue to hamper work against trafficking in human beings. Other factors causing problems in the identification of human trafficking, pre-trial investigation and consideration of charges include the cross-border nature of the phenomenon, limited or non-existent legal praxis and challenging definitional elements. Furthermore, the severity of sexual abuse and the victim's poor psychological condition impede the identification and processing of human trafficking. At worst, this may lead to the understatement or rejection of the victim's experiences, or even putting the blame on the victim.

National Rapporteur on Trafficking in Human Beings: Trafficking in human beings is changing

INCREASING NUMBER OF FINNISH VICTIMS PLACED IN THE ASSISTANCE SYSTEM

The number of Finnish girls and young women who have fallen victim to sexual abuse, either in Finland or abroad, and who have been placed in the assistance system for victims of human trafficking, has clearly increased. In 2015, Finns constituted the second largest customer group in the assistance system, immediately after asylum seekers of Nigerian origin. The National Rapporteur on Trafficking in Human Beings believes that this proves first and foremost that the ability of the authorities and NGOs to identify human trafficking has improved. It is probable that the proportion of Finnish victims in identified cases of human trafficking will continue to grow as awareness of human trafficking improves among those authorities who work with school drop-outs, drug users and children and young people who are otherwise at risk of exclusion.

NEW FORMS OF TRAFFICKING IN HUMAN BEINGS APPEAR ALSO IN FINLAND

Globally, the year 2015 has seen the appearance of new forms of human trafficking. The number of human trafficking cases involving forced marriage or the exploitation of individuals in criminal activities, such as thefts or the growing of narcotic plants and smuggling of narcotics, is increasing. Through her work, the National Rapporteur on Trafficking in Human Beings has discovered that these new forms of human trafficking have reached Finland too. The Rapporteur is receiving an increasing number of inquiries from authorities, NGOs and legal aid attorneys, asking for help and advice in dealing with new forms of human trafficking and solving practical problems.

LEGISLATIVE CHANGES

A legislative amendment (388/2015) concerning the identification of and assistance for victims of trafficking in human beings entered into force on 1 July 2015. The primary purpose of the amendment was to affirm by law the duties of the national assistance system for victims of human trafficking, in order to make the identification of and assistance for victims more transparent and to safeguard their human rights and equal treatment. The legislative amendment also affirmed the applicability of the provisions to all victims of trafficking, regardless of whether they have a municipality of residence in Finland or not. A recovery period was introduced as a new element in the amended Act. This can be granted to a victim of human trafficking who is legally resident in the country and unwilling to contact and cooperate with pre-trial investigation authorities. Furthermore, a provision on the actual identification of a victim of trafficking was added to the Act. According to this provision, identification is primarily carried out by a pre-trial investigation authority or prosecutor as part of the pre-trial investigation process. In certain circumstances, the Finnish Immigration Service and the assistance system for victims of human trafficking can also identify a victim. Furthermore, a provision on the removal of a victim from the assistance system was added to the Act.

In many respects, the legislative amendment meant that the prevailing practice was raised to the level of law. The National Rapporteur on Trafficking in Human Beings finds that the legislative amendment could increase the predictability of assistance and its compliance with good governance principles. However, the legislative amendment did not, unfortunately, solve the shortcomings and

The number of Finnish girls and young women who have fallen victim to sexual abuse, either in Finland or abroad, and who have been placed in the assistance system for victims of human trafficking, has clearly increased.

problems identified in practice. These are primarily related to the identification of frightened victims of human trafficking and their referral to the assistance system, as well as ensuring their equal treatment and the nationwide availability of such services. Furthermore, the legislative amendment did not solve, but rather strengthened, the close connection between the identification of victims of trafficking and provision of assistance, and the criminal process. Neither did it create an assistance process that would produce consistent and predictable legal effects.

The National Rapporteur on Trafficking in Human Beings is of the opinion that the assistance system should have been given a wider remit to identify its customers as victims of human trafficking. Under the current law, the assistance system cannot identify a person as a victim of trafficking in cases such as where the victim is a Finnish citizen and has fallen victim to trafficking in Finland but, for one reason or another, insufficient evidence has been obtained for pressing charges. As part of the over four-year legislative process, the National Rapporteur on Trafficking in Human Beings would also have liked to see the creation of an assistance system that would have more predictable legal effects and fulfil the rights of victims more equally. The Rapporteur is also concerned about reports according to which possible victims of human trafficking do not want to be placed in the assistance system because they do not believe it to be of help because it places them at risk of revenge and violence. The Rapporteur agrees with the Group of Experts on Action against Trafficking in Human Beings (GRETA) that the recovery period should have been extended to all possible victims of trafficking, referred to the assistance

system, who are legally resident in the country. Wider access to a recovery period might have promoted the identification of frightened victims of trafficking and their referral to the assistance system. The National Rapporteur on Trafficking in Human Beings considers it important that the effects of legislative amendments be closely monitored and that the Government take legislative and other measures to enhance the identification of victims of trafficking and ensure equal access to services. Parliament also required this from the Government when it approved the legislative amendment.

AMENDMENTS TO THE CRIMINAL CODE

The amendment of the Criminal Code concerning trafficking in human beings entered into force on 1 January 2015 (Act on the amendment of the Criminal Code, 1177/2014). The purpose of this was to clarify penal provisions concerning trafficking in human beings and pandering, and to affirm the status of victims of pandering in the criminal process.

As part of this amendment, types of offence that are related to the violation of victims' rights were transferred from pandering provisions to human trafficking provisions. Pressuring another person as a form of pandering was transferred to the human trafficking provision as a means of performing trafficking in human beings. The legislative amendment affirmed the identification of psychological control, which is characteristic of human trafficking, in the criminal process by amending the method of taking control over a person into exercising authority over a person. The legislative amendment underlines the fact that trafficking in human beings does not require

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physical deprivation of liberty or control over a person. Simultaneously, the identification of trafficking in human beings and the realisation of victims' rights in the criminal process was affirmed by stipulating on a legal aid attorney that will be appointed for victims of pandering for the purposes of pre-trial investigation (Act on the Amendment of the Criminal Procedure Act 1178/2014). According to the information received by the Rapporteur, this section of law has been applied very rarely, even if the victim of pandering would have been entitled to it. The National Rapporteur on Trafficking in Human Beings monitors the effects of legislative amendments on the identification of possible victims of human trafficking and the realisation of their rights.

MONITORING AND COORDINATION OF ACTION AGAINST TRAFFICKING IN HUMAN BEINGS WITHIN THE PUBLIC ADMINISTRATION

Based on a recommendation by the National Rapporteur on Trafficking in Human Beings, in March 2013 the Ministry of the Interior appointed a working group to draw up a proposal on the organisation, within the Government, of the inter-administrative monitoring and coordination of action against trafficking in human beings. In planning this coordination structure, the National Rapporteur considered it important that the structure enable the Government to respond to the practical challenges that have arisen in action taken against trafficking in human beings. As an independent expert, the Rapporteur has highlighted specific problems that have required cross-administrative solutions and to which existing legislation has not provided an answer. However, the present coordination structure has been unable to handle or solve these problems. This calls into question whether the present coordination structure enables more efficient action against trafficking in human beings, which was the original purpose of the coordination structure.

EVALUATION OF THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Finland ratified the Council of Europe Convention on Action against Trafficking in Human Beings (Treaty Series 43–44) in 2012. In June 2015, based on a report by the Group of Experts GRETA, the Committee of the Parties approved the recommendations for promoting the implementation of the Convention in Finland.

The Committee finds that the implementation of the Convention should be further advanced by adopting an anti-trafficking action plan and a system for monitoring its implementation, enhancing the identification of human trafficking, as well as ensuring that the assistance provided to victims is based on their individual needs. Furthermore, Finland must ensure a recovery and reflection period for all possible victims of human trafficking, facilitate access to compensation, increase the efficiency of investigation and prosecution in human trafficking offences, and strengthen the competencies and specialisation of police officers, prosecutors and judges. The Committee of the Parties recommends that the Finnish Government implement the proposals shown in GRETA's evaluation report and requests that the Government inform the Committee by 15 June 2017 of the measures it has taken to comply with this recommendation.

The National Rapporteur on Trafficking in Human Beings considers these recommendations appropriate and believes that their implementation will promote the identification of victims of trafficking and the realisation of their rights, as well as the investigation and prosecution of human trafficking offences. The Rapporteur will monitor how well Finland enforces these recommendations.



Special duty of the Non-Discrimination Ombudsman:
MONITORING REMOVAL
FROM THE COUNTRY

It is the duty of the police to remove any foreign nationals without legal permission to reside in the country from Finland. Sometimes, the authorities must use forcible measures during involuntary removal from the country. In 1991–2015, a total of 17 deaths were reported in connection with removals from a country in Europe. Deaths have occurred in countries such as the United Kingdom, Germany and France, and the latest case occurred in Sweden in spring 2015. Most of the deaths resulted from suffocation due to improper use of force. In Finland, no deaths or serious injuries have been reported.

Due to serious violations of rights in EU member states, an article was included in the so-called Return Directive¹ of 2008, stating that Member States must have an effective forced-return monitoring system. Independent external monitoring was considered to improve the legal protection of both returnees and escorts, and prevent excessive use of force and other prohibited treatment. As a result of this, Section 152 b was added to the Aliens Act, whereby the then Ombudsman for Minorities, now the Non-Discrimination Ombudsman, is required to monitor removals from the country. The legislative amendment entered into force on 1 January 2014.

The above section of the Aliens Act is broad and general in nature. It stipulates that the Non-Discrimination Ombudsman shall monitor the enforcement of the removal from the country in all of its stages. This covers all measures related to the removal, including voluntary return. The monitoring obligation imposed by the Return Directive does not define the substance of monitoring in any way. The article in question only stipulates that Member States shall provide for an effective forced-return monitoring system. According to the Government pro-

posal, this monitoring requires visits to detention centres, airports and external borders, as well as monitoring of the various return measures employed within Finland. Furthermore, the monitoring authority must participate in trips for the removal of persons from the country. However, it is important to note that the proposal did not provide the monitoring authority with the opportunity to respond in terms of the time of the enforcement of removal from the country, or the use of forcible measures.

After monitoring became the duty of the Non-Discrimination Ombudsman, she began to develop the substance of this duty without any previous national models or experience of it. At the same time, the Ombudsman began implementing practical monitoring measures. The substance and structures of these measures were based on international recommendations concerning the implementation of forced return, issued by bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment² and the Council of Europe³. Furthermore, Frontex (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), which coordinates joint returns, has its own Code of Conduct⁴ for joint return operations.

According to Frontex, the purpose of monitoring is to collect information and ensure that return operations are carried out in a humane manner. The participating State must ensure that it has an effective independent monitoring system. Lack of monitoring can even lead to prohibition to participate in a joint return flight.

Forced returns may be difficult for both returnees and the authorities enforcing them. According to the Committee Against Torture, return operations involve an obvious risk of inhuman treatment. The key themes of international recommendations include the opportunity of the returnee to prepare for the journey, taking his or her state of health into account, proportionate use of force as a last-resort measure, sufficient training of escorts and appropriate reporting of the journey.

HUMANITY AND RESPECT FOR HUMAN RIGHTS AS GOALS IN RETURN OPERATIONS

The purpose of the monitoring of removals from the country is to develop the return process in order to make it more humane, while ensuring respect for human rights. Other goals include increasing the transparency of the return system, improving the returnee's legal protection and reducing prejudice against the operations of the authorities. The presence of a monitor as such reduces pressure and conflict sensitivity related to returns. Monitoring also makes the enforcement authority pay attention to its operations and enables any defects to be identified and corrected. Monitoring safeguards and affirms that the returnee's fundamental and human rights are respected, and protects enforcement authorities from unfounded criticism.

During her monitoring journey, the monitor can ask questions from the head of the escort team and express her observations, but she has no authority to intervene in the execution of the return operation. Based on experiences collected from individual return trips, the Non-Discrimination Ombudsman can provide authorities with proposals, recommendations, statements and advice related to the enforcement of removals. At this

stage, the goal is primarily to influence the authorities so that removal practices that respect fundamental and human rights are included in the internal guidelines of the police and that they become a joint operating model for all parties involved in tasks related to removals from the country.

In support of her monitoring operations, the Non-Discrimination Ombudsman has appointed a monitoring group for the supervision of removal from the country. This includes representatives of the key authorities and NGOs involved in alien and refugee affairs. The monitoring group disseminates information among the various operators and supports the Ombudsman in areas such as the evaluation and development of monitoring activities.

MONITORING IN PRACTICE

The scope of monitoring may vary, covering all stages of return or targeting only a specific stage, such as collecting the person to be removed from the detention centre. Due to the number of removals and based on an appropriateness and risk assessment, the Ombudsman has so far focused on returns in which the person to be removed is escorted to the destination. The emphasis is placed on persons in a vulnerable position and so-called risky returns during which the returnee may, for example, resist removal from the country and the police may have to use force. In the assessment of vulnerability, attention is paid to families with children, unaccompanied women, the returnee's mental and physical health, as well as returns to challenging destination countries.

By the end of 2015, monitors participated in a total of 15 return flights. The destination countries included

Special duty of the Non-Discrimination Ombudsman: Monitoring removal from the country

Albania, Kosovo, Italy, Morocco and Nigeria. Monitors took part in six joint return operations by Frontex and seven national return flights. In addition, the monitors participated in the removal from the country of two individual persons onboard a scheduled flight.

Other forms of monitoring have included overseeing the operations of authorities in the Joutseno and Metsälä detention units in connection with the collection of returnees. In some cases, the operation was monitored from the reception centre or detention unit until the returnee and escorts boarded the plane.


As a monitor in this field, the Non-Discrimination Ombudsman cooperates with the police, the border control authorities, district courts, reception centres and detention units, as well as the returnees' assistants and the National Police Board. The main focus of monitoring has so far been the operations of Helsinki and Southeast Finland police departments, because many returnees who are to be escorted out of the country are held in detention units located in these two areas.

During removal from the country, monitors pay attention to matters such as how the police officer heading the escort team manages the operation and how police escorts treat the persons being removed. Attention is paid to the officers' communication with returnees, information given about the journey, taking account of the returnee's state of health and need for interpretation, offering food and drink, the possibility to use a toilet and take along luggage, use of force proportional to resistance, and skilled use of forcible means.

With respect to individual returnees, the Non-Discrimination Ombudsman must take account of privacy protection and secrecy obligations. Returns also involve numerous confidential matters from the policing viewpoint. Publicity and the broad dissemination of information do not, therefore, form the focus areas in such operations. The Non-Discrimination Ombudsman and individual monitors do not disclose information, either in advance or afterwards, on return operations or their implementation.

**OBSERVATIONS BY MONITORS:
RETURN OPERATIONS RUN MAINLY WELL
– COOPERATION BETWEEN AUTHORITIES
NEEDS IMPROVEMENT**

Cooperation between the Non-Discrimination Ombudsman and the various authorities involved in removals from the country has begun and is running smoothly. Although monitoring has been new for all of the parties involved, the attitude towards it has been positive and constructive from the beginning. Based on the monitoring carried out so far, the operations of the police are mainly appropriate and professional. The most serious single case of misperformance reported to the Ombudsman was a Frontex operation in which a person was removed from Finland although he had received a residence permit on the previous day. According to the National Police Board and the Helsinki Police Department, the police officers enforcing the return had not yet received notice of the newly granted residence permit. After numerous difficulties, the person who had been removed from the country returned to his family in Finland at his own cost and claimed damages from the State Treasury. According to the police, workflow instructions were issued after the incident in order to prevent it from recurring.



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Special duty of the Non-Discrimination Ombudsman: Monitoring removal from the country

During the enforcement of returns, the police take account of the fact that their operations are supervised by an external and independent monitor. Monitors receive the necessary advance information and can attend all stages of the enforcement operation if they so wish. The Non-Discrimination Ombudsman is receiving more information from the various parties operating with returnees. She does not therefore solely rely on information received from the police, but obtains a more complete picture of returns and is able to assess situations more objectively.

The areas of development identified by monitors include cooperation between the police and the reception and detention units. Reception centres and detention units play a key role in preparing returnees for their journey. Smooth cooperation with the police is therefore of the highest importance. The monitors have found that returnees do not always have sufficient opportunity to prepare for their return and attend to their personal matters before departure. Reception centre employees have expertise in preparing returnees, which may make the departure easier and reduce the risk of force being used.

Confidential cooperation with the police ensures, for example, the continuity of healthcare for the returnee. Sufficient advance information on the date and time of departure provides employees with the opportunity to prepare any medication and instructions for the journey. For example, an interruption in the medication of a mentally ill person due to his or her sudden removal from the country may lead to the need to use force during the journey, which could have been avoided with the appropriate medication.

Not all destination countries grant entry to their citizens, neither do they grant passports or temporary travel documents to persons who have lost their identity documents. These cause lengthy detentions and suspended returns. If the return is suspended, the returnee must be offered the opportunity for a medical check-up, particularly if the attempted return involved physical resistance and the use of force.

Monitors can assess return operations on the basis of their own observations and through the escorting reports drawn up by the police. However, the quality of escorting reports varies greatly. Some heads of escort teams write thorough reports while others record only the flight route, without any description or assessment of the enforcement of the removal. The police should attend to the uniform reporting of escorted returns.

The majority of asylum seekers' assistants have solid expertise in refugee law and operate in accordance with good advocacy practice. However, according to the monitors' observations and knowledge from the field, there are also assistants with insufficient legal training and skills. In some cases, the activities of unethical assistants seem to involve financial motives. If an asylum seeker has received a negative asylum decision, the assistant may make fake promises at the appeal stage or persuade the person to make new, unfounded asylum applications. These unfounded hopes may temporarily lengthen the applicant's stay in the country, but easily lead to disappointments that may trigger resistance and cause the police to use force.

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It is increasingly important that Finland has an independent external monitoring system fulfilling the obligations set forth in the EU directive and in national legislation, and ensures that fundamental and human rights are respected during removals from the country.

The monitoring of removals from the country has also raised the question of the identification of persons who have fallen victims to trafficking in human beings, and Finland's responsibility to help them. This often concerns persons who were victimised in another EU member state and who have later arrived in Finland to seek asylum. Decisions on refusal of entry of persons in a highly vulnerable position, and their return to circumstances in which they have fallen victim to abuse, are questionable, particularly in view of the current asylum seeker situation in Europe. Various operators have contacted the Non-Discrimination Ombudsman, who will investigate the matter in her capacity as the National Rapporteur on Trafficking in Human Beings.

Increasing pressure due to the flow of migrants and asylum seekers to Europe will reflect in the increasing number of persons being removed from the country. New reception centres have been established in various parts of Finland. In the future, local police departments that, until now, have handled only a few removal cases, will have to manage an increasing number of removals from the country. This will make it more challenging for the monitors to obtain and process information and will intensify pressure for increasing the number of monitored return operations. It is increasingly important that Finland has an independent external monitoring system fulfilling the obligations set forth in the EU directive and in national legislation, and ensures that fundamental and human rights are respected during removals from the country.

¹⁾ Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 8(6)

²⁾ *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 13th General Report on the CPT's activities; deportation of foreign nationals by air*

3) Council of Europe, *Twenty Guidelines on Forced Return*, 2005

4) Frontex, Code of Conduct for joint return operations coordinated by Frontex

PERSONNEL OF THE OFFICE OF THE NON-DISCRIMINATION OMBUDSMAN

NON-DISCRIMINATION OMBUDSMAN KIRSI PIMIÄ

Kirsi Pimiä has held the position of Non-Discrimination Ombudsman since 15 May 2015. She is on leave of absence from her position as Committee Counsel, which she has held since 2003. During her previous leaves of absence, she has worked as Director in the Ministry of Justice (2013–2014), as Head of Unit of the EU Affairs Department at the Prime Minister's Office (2012–2013), and as Special Adviser to the Minister of Justice (2007–2008). Her previous positions also include Legal Counsel at the Permanent Representation of Finland in the EU (2001–2003). She holds the degree of Master of Laws, trained on the bench.

PERSONNEL

Personnel of the Office of the Non-Discrimination
Ombudsman on 31 December 2015

Non-Discrimination Ombudsman **Kirsi Pimiä**

Head of Office **Rainer Hiltunen**

Senior Officer **Jussi Aaltonen**

Senior Officer **Måns Engvist**

Senior Adviser **Robin Harms**

Senior Officer **Mikko Joronen**

Senior Officer Päivi Keskitalo

Senior Officer **Maija Koskenoja**

Senior Officer **Ulrika Krook**

Senior Officer **Pirjo Kruskopf**

Department Secretary **Elena Leinonen**

Department Secretary **Miia Mäkelä**

Special Planning Officer **Päivi Okuogume**

Senior Officer **Aija Salo**

Communications Officer **Pirjo Sohlo**

Researcher **Toni Tuomi**

Planning Officer **Massimo Zanasi**

TOGETHER
for equality.





NON-DISCRIMINATION
OMBUDSMAN

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