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**The report of the  
Non-Discrimination  
Ombudsman to the  
Parliament  
2022**



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# Foreword

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Equality and fundamental and human rights are now being increasingly clearly recognised as central values of the Finnish society. Many companies, authorities and non-governmental organisations want their commitment to equality and human rights to be known. For example, the non-discriminatory nature of the Fair Play policies of sports organisations is something the entire sports community is committed to. The I Am Antiracist campaign of the Ministry of Justice and Non-Discrimination Ombudsman has over a hundred committed partners. However, discriminatory and racist speech has become a normalised part of the societal discourse and it targets sexual minorities, asylum seekers and racialised Finnish people in particular.

Both trends are visible in the work of the Non-Discrimination Ombudsman: we see gratifying progress but also harsh and crushing experiences of discrimination and exclusion. In this report we communicate to the Parliament the challenges to equality that we have identified and our proposed solutions for them.

This Parliament report is the second by the Non-Discrimination Ombudsman. The first report completed during the current Non-Discrimination Act was issued in spring 2018.

In the last two years, the coronavirus pandemic has shaken the entire world and the Finnish society. During the pandemic, there has been a lot of conversation about the prerequisites for restricting fundamental rights. During this time, there has also been an understanding of the ways we can protect those in the most vulnerable positions and ensure equality for all. The assessment of the consequences of the restrictions is still underway, and the assessment of the pandemic's impact must also be verified in relation to minorities, and the resources for the remedial actions must be secured.

For the past four years, the Ombudsman's office has been growing and has been given new duties. At the start of 2021, the office's duty of monitoring deportations expanded to cover the returns performed by the European border and coast guard agency Frontex. In autumn 2021, Parliament approved an amendment to the legislation concerning the Non-Discrimination Ombudsman, which meant that we were tasked with reporting violence against women from the start of 2022. This duty will not yet be discussed in this report. The position of the Ombudsman for older people was established at the Non-Discrimination Ombudsman's office in early 2022.

The number of customers contacting us increases every year and exceeded the milestone of 2,000 in 2021. 1,584 of these contacts concerned discrimination. This is a sign that an increasing number of people are familiar with the Ombudsman's work and feel that they can receive help with a discriminatory situation. On the other hand, the number is also a sign that discrimination is deeply ingrained in the structures of the Finnish society. Based on research, we know that those who have experienced discrimination do not always seek help and that, for many groups, discrimination is a considerably under-reported phenomenon. People might not know where they can get help, they might not believe that the request for help will lead anywhere, or they might be afraid of repercussions.

The Ombudsman's own reports, such as the report implemented in 2020 concerning the discrimination people of African background have experienced, supplement the overall understanding, obtained from customer messages and research, that there is still a lot of work to be done before equality is achieved. Starting from childhood, discrimination and racism are experiences that influence the lives of many people who belong to minorities. Therefore, it is necessary to make an effort to ensure that a person who has experienced discrimination can trust that the discrimination will be intervened in and the perpetrator will face consequences for their discriminatory actions.

Many of the changes the Ombudsman proposed in the 2018 Parliament report in relation to the legislation and development of structures have been implemented. However, one central matter is still unfinished: the partial reform of the Non-Discrimination Act.

The Non-Discrimination Act and the monitoring system built on it contain the tools for addressing discrimination. A lot of information has already been collected concerning the effectiveness of the Act and the faults it has. It is crucial that the pending partial reform of the Non-Discrimination Act implements changes that strengthen the discrimination victims' access to their rights. Well-functioning monitoring also requires the Non-Discrimination Ombudsman to have the resources to respond to the increasing number of customers and to take the initiative in dismantling discriminatory structures.

In our work, we still encounter the misconception that equality means that all people are treated the same. However, similar treatment for all is not always enough to ensure that equality is realised. This misconception

creates serious obstacles for things such as a person with disability's participation in working life. We need a fundamental shift in our thinking in order to achieve the objective of persons with disability's true equality and participation, which was set for us by the UN's Convention on the Rights of Persons with Disabilities.

Large-scale societal changes – be it the increasing utilisation of digitalisation and artificial intelligence or the building of wellbeing services counties – require that the authorities have the readiness and competence to assess equality from the viewpoint of different population groups and, particularly, very vulnerable groups. This need relates to legislation, change projects, and practical implementation. Equality planning is a statutory and useful tool for supporting these processes, and the entire government and ministries should lead by example.

The fundamental and human rights of the vulnerable population groups are at the heart of all Ombudsman work. In the last few years, we have highlighted matters such as issues related to the residence permits of trafficking victims, defects in the reunification practices for underage asylum seekers who arrived in the country without a guardian, and the situation of vulnerable persons in relation to deportation.

The difficult and vulnerable situation of victims of trafficking must be improved with the means of residence permits, safe living, strong support services and well-functioning criminal procedure. The action programme against human trafficking and its concrete measures provide a good frame for addressing this serious human rights issue.

The amendments made to the Aliens Act in 2015–2016 particularly weakened the rights of people seeking international protection. Some corrective measures have been taken in 2020–2021, but additional amendments to the Aliens Act are needed. An example of this is the group of “undocumented” people that includes hundreds of children. Enduring and humane solutions must be found for this group, and political rhetoric must be set aside.

In autumn 2021, the Government approved the fundamental and human rights action programme and the first action programme against racism. Both have the guiding principle of strengthening the knowledge-based approach; either through indicators for fundamental and human rights or follow-up data concerning discrimination. Enhancement of this knowledge base requires resources for sustained research and information collection. This would facilitate the identification of discriminatory structures or structures that prevent the guaranteeing of rights, and it would make the allocation of remedies more effective.



In the work of the Non-Discrimination Ombudsman, civil society plays an incomparably central role as a support for vulnerable groups, but also as a messenger and expert. For us, it has been very valuable that within the Advisory Board for Non-Discrimination we have, with the help of young representatives, been able to discuss the experiences of young people belonging to minorities.

Regrettably often, the young activists belonging to minorities have also been the target of hate speech and on-line shaming. Therefore, it is important that the police, prosecution authority and courts show, in accordance with the human rights agreements and the constitution, the limits of freedom of speech and opinion. It is part of fundamental rights that the realisation of one person's fundamental rights may not infringe the fundamental rights of others.

Heartfelt thanks to the entire personnel of the Non-Discrimination Ombudsman's office for this report's content and the thousands on-duty calls, messages, letters, statements and meetings behind it. The employees' considerable expertise and commitment have carried our work through the difficult pandemic.

I hope that this report acts as an incentive for conversation about the promotion of equality and fundamental and human rights and of the measures still needed. How do we build Finland into a society that is increasingly safe for and accepting of all who live and move here? Where a person who has experienced discrimination, a victim of human trafficking, or an asylum seeker knows that they will be supported and that their case will be processed justly. A society where every child and young person can feel themselves to be precious and important as their unique selves. We expect these themes to result in a good dialogue with the Parliament.



A handwritten signature in black ink that reads "Kristina Stenman". The signature is fluid and cursive.

Kristina Stenman  
*Non-Discrimination Ombudsman*

# The Non-Discrimination Ombudsman

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The Non-Discrimination Ombudsman is an autonomous and independent authority tasked with promoting equality and tackling discrimination. You can contact the Non-Discrimination Ombudsman if you have experienced or witnessed discrimination based on age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relations, state of health, disability, sexual orientation, or another personal characteristic.

The Non-Discrimination Ombudsman also acts as the National Rapporteur on Trafficking in Human Beings for Finland and monitors the enforcement of removal from the country. In addition, the duties of the Ombudsman include monitoring and promoting the position and rights of foreigners. Starting from the 1st of January 2022, the Ombudsman was also assigned a new task as the Rapporteur on Violence Against Women.

The area of responsibility of the Non-Discrimination Ombudsman is extensive. The different duties are linked by the monitoring and promotion of fundamental and human rights. People contact to the Non-Discrimination Ombudsman in connection with all of the Ombudsman's duties. The number of contacts has increased every year, and most of them are related to discrimination. In practice, the work of the Non-Discrimination Ombudsman includes guidance, investigation of individual cases, promoting reconciliation, training, gathering information, influencing legislation and the practices of authorities, and legal counselling.

The rights and duties of the Ombudsman are stated in the Non-Discrimination Act (1325/2014) and the Act on the Non-Discrimination Ombudsman (1326/2014). Some of the Ombudsman's rights and duties are laid down in the Aliens Act (301/2004).

## Structure of the Report to the Parliament

In accordance with the Act on the Non-Discrimination Ombudsman, the Ombudsman submits a report to the Parliament on the realisation of non-discrimination once in every four years. As provided for in the Act, the report also discusses human trafficking and related phenomena. This Report to Parliament is the second submitted by the Ombudsman. The report discusses the different aspects of the Ombudsman's authority and activities extensively – equality, discrimination, realisation of the rights of foreigners, anti-trafficking work and monitoring the enforcement of removal from the country. This report does not yet discuss ob-

servations related to the Ombudsman's new duty as the Rapporteur on Violence Against Women.

The first section of the report discusses the Ombudsman's work to promote equality and address discrimination. The section brings up key observations of the Ombudsman and comments on equality, discrimination and the functioning of the legislation. Observations on human trafficking and anti-trafficking activities are discussed in section two, and recommendations are presented for e.g. improving the legal protection of victims of human trafficking. The third section discusses the realisation of the rights and position of foreigners from the perspective of the rights of the child, among other things, and highlights central needs for reform in the legislation on foreigners. The third section also discusses the Ombudsman's observations of the work on monitoring removals from the country and presents recommendations for improving the position of persons in a vulnerable position to be returned in particular. In addition, recommendations to the Parliament that can be used to improve the realisation of fundamental and human rights in Finland are included at the end of the report.



# 1. Equality is the foundation of a just society

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In a just society, factors related to an individual such as disability, sexual orientation, religion or ethnic origin should not affect a person's chances of receiving education, finding a job, using services and participating in the society in other ways.

However, the reality is that people have different starting points and opportunities in the society, and discrimination affects the status and opportunities for inclusion of people in Finland. The realisation of true equality requires making active efforts to remove inequality based on discrimination from all aspects of the society.

Equality and inclusion are linked to the prevailing attitudes in the society in many ways. Dismantling prejudices and structural discrimination is necessary for creating a more equal society. The work of the Non-Discrimination Ombudsman promotes the realisation of equality comprehensively in the society; it aims to remove and prevent structural discrimination and address the discrimination that people experience.

The Non-Discrimination Ombudsman is an independent and autonomous authority, whose central duty is to address discrimination and promote equality, as well as supervise compliance with the Non-Discrimination Act. The Ombudsman receives complaints concerning discrimination based on a wide range of different grounds for discrimination in all aspects of life. The number of complaints has grown significantly every year.

Under the Non-Discrimination Act, nobody may be discriminated against on the basis of their age, origin, nationality, language, religion, belief, opinions, political activity, trade union activity, family relationships, state of health, disabilities, sexual orientation or other personal characteristics. Discrimination means simply that without any acceptable reason, one person has been treated worse than others in a comparable situation because of one or more personal characteristics of that per-

son. The discrimination may be direct or indirect, or it may involve refusing to provide reasonable accommodations for people with disabilities. The Non-discrimination Act also prohibits harassment and orders or instructions to discriminate.



**Dismantling prejudices and structural discrimination is necessary for creating a more equal society.**

Under the Non-Discrimination Act, the Ombudsman has many different ways to address to discrimination and promote equality. What the Non-Discrimination Ombudsman does in practice involves counselling, investigating individual cases, promoting conciliation between the parties, providing training, gathering information, drawing up reports, as well as promoting equality in legislative projects and in the practices of the authorities. The Ombudsman can also bring an individual case concerning discrimination to the National Non-Discrimination and Equality Tribunal or a court of law to be resolved.

This section discusses the status of equality and the occurrence of discrimination in Finland. The section proposes solutions for reducing discrimination and promoting equality and the better realisation of legal protection of people. The Ombudsman presents recommendations for developing legislation and taking measures to promote equality.

The first part of the section discusses the ongoing partial reform of the Non-Discrimination Act. The Non-Discrimination Ombudsman em-

phasises that improving the legal protection of victims of discrimination in the reform is necessary. The second part of the section focuses on the obligation of the authorities and public actors to promote equality. The Ombudsman finds that the authorities must promote equality more effectively and highlights the key position of the authorities in safeguarding equality. After this, the sec-

tion examines the occurrence of discrimination in different aspects of life in Finland, with special attention paid to the areas that have played a central role in the Ombudsman's work during the past four years, such as the working life of people with disabilities, housing, education and digitalisation. Finally, the realisation of the equality of the indigenous Sámi people is discussed.

### **Direct discrimination**

Direct discrimination refers to a person not being treated as well as another person would be treated in a comparable situation due to a personal characteristic without an acceptable reason.

### **Indirect discrimination**

Indirect discrimination means that an apparently neutral provision, criterion or practice puts a person at a particular disadvantage compared with other persons based on a personal characteristic without an acceptable reason.

### **Denial of reasonable accommodations**

Denial of reasonable accommodation constitutes discrimination. Authorities, education providers, employers and providers of goods and services must provide reasonable accommodation for people with disabilities. The accommodations secure the equality of people with disabilities in individual situations. The accommodations must correspond to the needs of the person with a disability in each situation. Reasonable accommodations are assessed on a case-by-case basis, and accommodations can be implemented in different ways in different situations.

### **Multiple discrimination**

Multiple discrimination means being discriminated against on the basis of two or more grounds for discrimination. The Non-Discrimination Act applies to multiple discrimination, also when gender is one of the grounds for discrimination. Otherwise, gender-based discrimination is monitored by the Ombudsman for Equality.

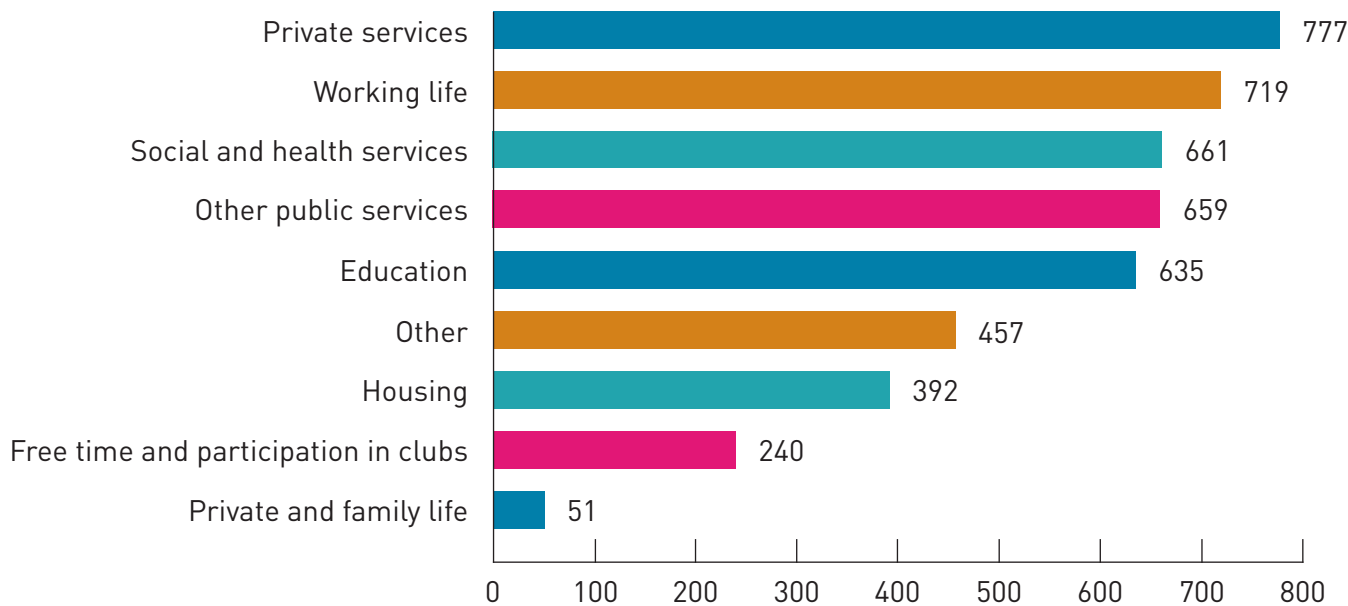
### **Harassment**

Harassment constitutes discrimination prohibited by the Non-discrimination Act. In the Act, harassment is defined as deliberate or de facto infringement of the dignity of a person. The behaviour creates an intimidating, hostile, degrading, humiliating or offensive environment related to prohibited grounds for discrimination, such as sexual orientation, origin or disability.

### **Positive action**

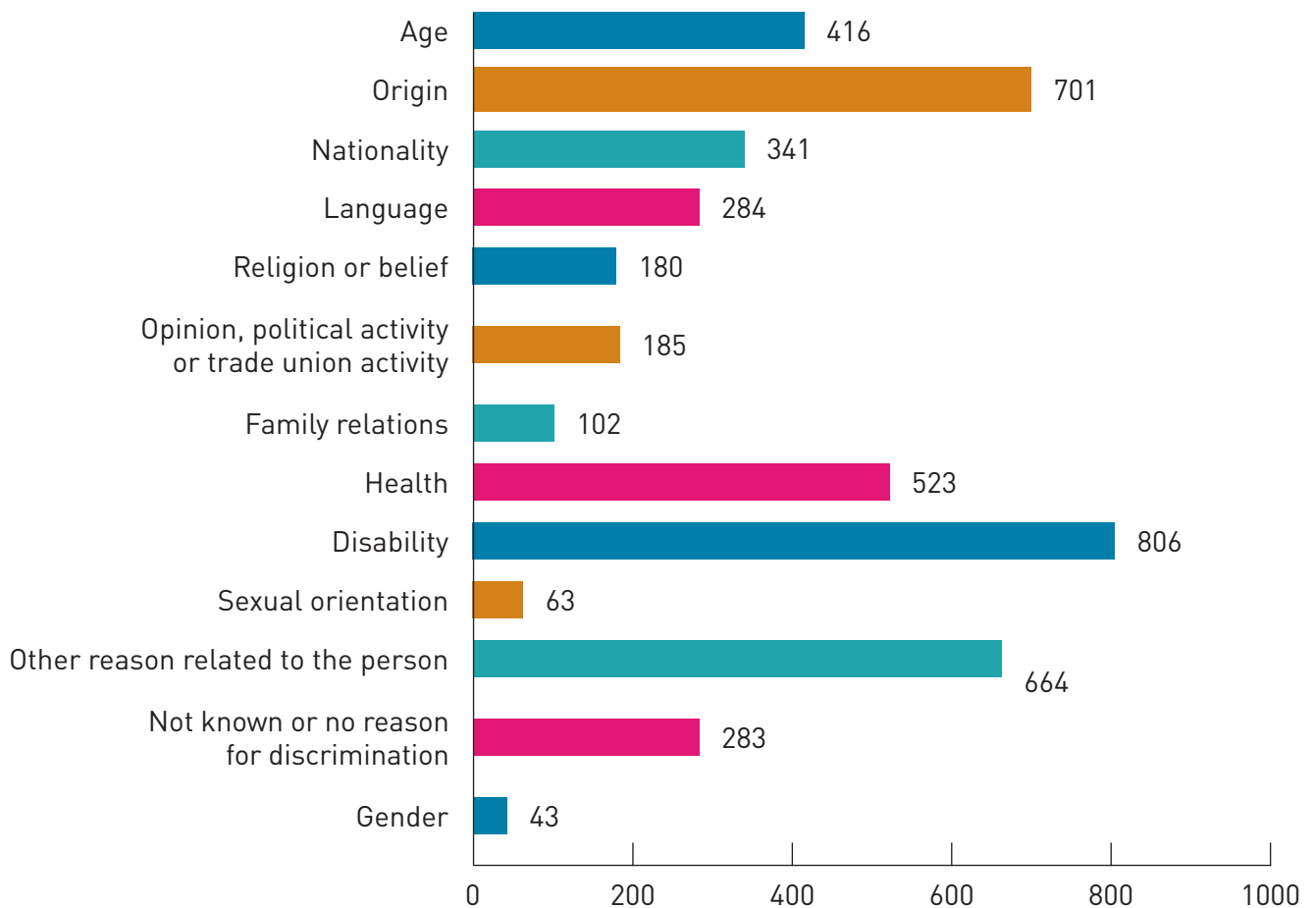
Positive action refers to measures used to promote true equality or prevent or remove disadvantages caused by discrimination. Positive action does not constitute discrimination.

## Contacts concerning discrimination in different areas of life in 2018–2021



The distribution of the received contacts concerning discrimination in different areas of life was in 2020–2021 as follows: private services 777, working life 719, other public services 659, health and social services 661, other 457, education 635, living 392, free time and participation in clubs 240 and private and family life 51.

## Contacts concerning discrimination according to grounds for discrimination 2018–2021



The distribution of the grounds for discrimination of received contacts concerning discrimination was in 2018–2021 as follows: age 416, origin 701, nationality 341, language 284, religion or belief 180, opinion, political activity or trade union activity 185, family relations 102, health 523, disability 806, sexual orientation 63, other reason related to the person 664, not known or no grounds for discrimination 283 and gender 43.

## 1.1 The access of victims of discrimination to their rights must be strengthened in the partial reform of the Non-Discrimination Act

When the previous Report to Parliament was submitted, the Non-Discrimination Act had been in force for three years. Now there are already several years of experience on its enforcement, and the trends are clear: the importance of non-discrimination is recognised more and more widely as a key part of the development of the society, which is positive. On the other hand, the increasing number of complaints concerning suspected discrimination shows that discrimination continues to be a severe problem in the society, and in the light of research, it remains largely hidden.

Discrimination against minorities is still common in Finland. According to a study by the European Union Agency for Fundamental Rights (FRA), nearly half (45%) of persons with African background living in Finland had experienced discrimination during the past year<sup>1</sup>. Discrimination related to African background occurred in Finland second most frequently out of the EU Member States studied, and roughly twice more than in the other EU countries studied on average. The prevalence of discrimination in Finland is also demonstrated by the fact that 44% of Finns believe that discrimination of persons with disabilities is common in Finland<sup>2</sup>. A third example of the prevalence of discrimination can be found in a study conducted by the University of Helsinki, according to which a person with a name that appears to be Somali has to submit roughly four times more job applications to get an interview than an applicant with a name that is commonly perceived as a traditional Finnish name<sup>3</sup>.

Discrimination can be reduced by influencing people's attitudes. It is important to communicate that discrimination is prohibited and that discrimination will be addressed. The directives of the European Union that bind Finland also require the legal consequences of discrimination to be effective, proportionate and cautionary. Effective con-

sequences are also important so that those who have been targeted by discrimination can trust that their rights will be realised, which encourages people to address discrimination. Studies and reports show that in this respect, Finland has much room for improvement in its legislation. The Non-Discrimination Ombudsman considers it very important to be able to strengthen legal protection in the partial reform of the Non-Discrimination Act that is in progress at the Ministry of Justice. The most important suggestions by the Non-Discrimination Ombudsman for strengthening legal protection can be found in the following section.



**It is very important to be able to strengthen legal protection in the partial reform of the Non-Discrimination Act.**

### 1.1.1 Proportionate consequences for discrimination

The starting point of the Non-Discrimination Act is that the victim of discrimination has the right to receive compensation from an authority, employer or education provider or a provider of goods or services, if the prohibition of discrimination has been violated. According to the assessment report concerning the Non-Discrimination Act commissioned by the Government, courts of law ordered compensation to be paid in legal actions taken based on the Non-Discrimination Act in 2015–2019 only three times in total. According to the assessment report, parties were sentenced to pay compensation for discrimination in legal actions taken based on the Criminal Code of Finland “a few times” during the same period<sup>4</sup>.

Claiming compensation has been made especially difficult in Finland. Victims must summon the party guilty of discrimination to the District Court themselves and claim compensation even when the National Non-Discrimination and Equality Tribunal has already stated that discrimination has occurred. However, it is often not worth it for the victim to bring a claim for compensation to a District Court, because there is a risk that the vic-



tim must pay a considerable compensation for the legal costs of the opposing party, if the victim loses the case involving the claim at court.

When the Non-Discrimination Act was enacted, the idea was that processing the case by the National Non-Discrimination and Equality Tribunal would smooth the way for claiming compensation at a District Court. The amounts of compensation for discrimination in the sentences imposed by District Courts have been some thousands of euros on average. Submitting a claim for such a small amount of compensation to the District Court is not practical in any way, however, because the risk of having to pay the legal costs is manifold compared to the level of compensation even in simple matters. For example, the Finnish Bar Association has proposed that claims with such a small amount in euros should not be processed by District Courts as they currently are.

#### **Recommendation:**

The Non-Discrimination Ombudsman considers it important that the National Non-Discrimination and Equality Tribunal be given the opportunity to order a compensation to be paid in connection with assessing whether the prohibition of discrimination has been violated. The Constitutional Law Committee of the Parliament already wanted to investigate the possibility of the Tribunal ordering a compensation to be paid when the current Non-Discrimination Act was enacted. The processing by the Tribunal is free of charge for both parties, and the decisions of the Tribunal can be appealed to the Administrative Court.

### **1.1.2 Strengthening legal protection in working life**

Since 2004, throughout the period of validity of the Non-Discrimination Act, there has been discussion in Finland on the need to strengthen the position of the victim of discrimination in working life. When the Non-Discrimination Act was

enacted, Finland decided on a solution that was unusual among the European countries; in the solution, the authorities that monitor the overall prohibition against discrimination that in Finland are the Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal, do not have jurisdiction over working life. Concerning the Non-Discrimination Ombudsman, parties such as the European Commission, the European Commission against Racism and Intolerance (ECRI) as well as the Constitutional Law Committee of the Finnish Parliament have drawn attention to the issue.



### **Studies show that minorities in particular face widespread discrimination in working life.**

The opportunities of the occupational safety and health authorities to address discrimination in working life are limited in many ways based on the convention of the International Labour Organisation (ILO), among other things. The activities of occupational safety and health authorities are focused on providing guidance for the employer during the employment relationship. As a result, they have not addressed discrimination after the end of the employment relationship or after the discrimination has ended for other reasons. One of the major consequences is that proven discrimination has been transferred to the prosecutor to be assessed for criminal sanctions. In such situations, the methods of legal protection of the Non-Discrimination Act concerning reversed burden of proof, for instance, have not been realised.

Working life is one of the most central aspect of life regarding the prohibition of discrimination, because discrimination in working life has an extensive impact on the financial and social position of the individual as well as the trust of minorities in that they will be treated fairly in the society. Studies show that minorities in particular face widespread discrimination in working life. However, people belonging to minorities only rarely



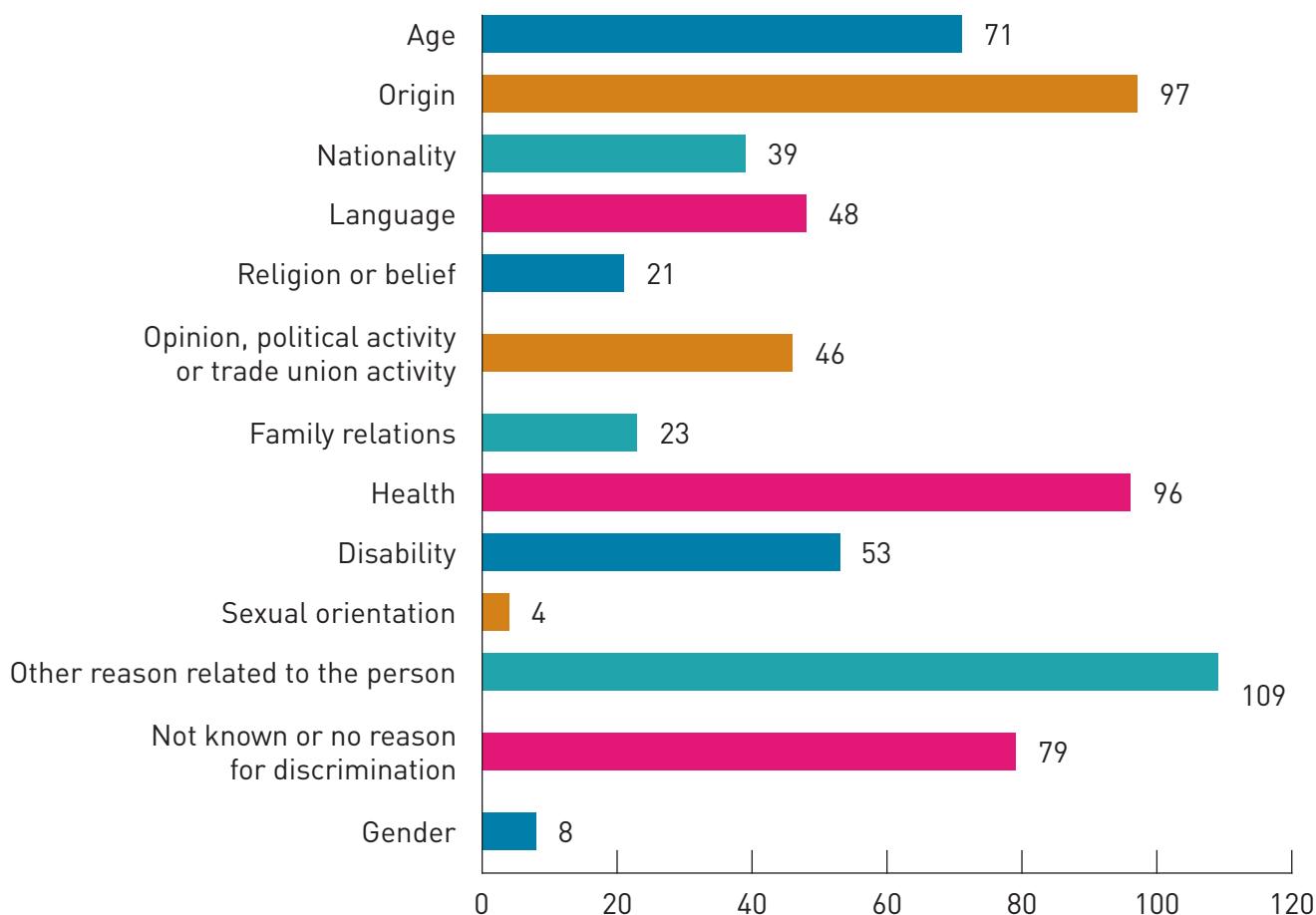
bring discrimination in recruitment, for instance, to be investigated by the occupational safety and health authorities.

Non-governmental organisations and some of the labour market organisations have suggested granting the Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal the opportunity to assess discrimination in working life, too, in the same way as they assess discrimination elsewhere in the society. Currently, the Ombudsman for Equality can address discrimination in working life when it is related to gender, gender identity or gender expression, and the Ombudsman for Equality can also bring cases involving discrimination in working life to be processed by the National Non-Discrimination and Equality Tribunal.

### Recommendation:

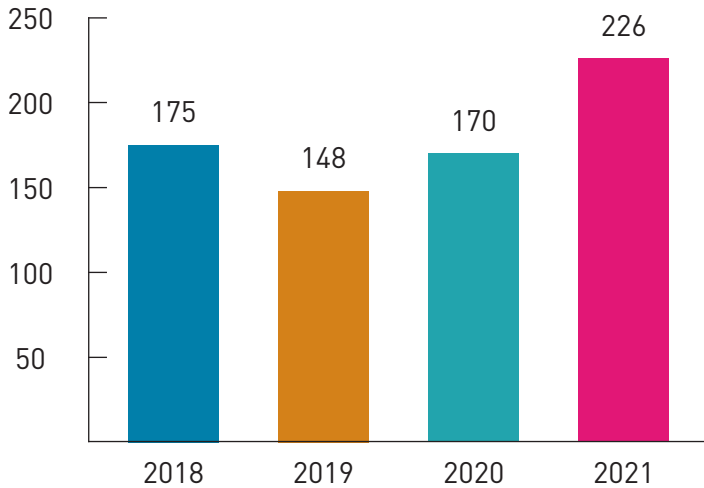
The Non-Discrimination Ombudsman considers it important that it would also be possible to bring matters involving discrimination in working life to be processed by the Non-Discrimination Ombudsman and, when necessary, the matter could also be presented to the National Non-Discrimination and Equality Tribunal. This would strengthen legal protection in working life. The occupational safety and health authorities would still also be able to do their part to assess and address discrimination in working life.

## Contacts concerning discrimination in the working life according to grounds for discrimination 2018–2021



The distribution of the grounds for discrimination of the received contacts concerning discrimination in education was in 2018–2021 as follows: age 71, origin 97, nationality 39, language 48, religion or belief 21, opinion, political activity or trade union activity 46, family relations 23, health 96, disability 53, sexual orientation 4, other reason related to the person 109, not known or no grounds for discrimination 79 and gender 8.

## Contacts concerning discrimination in the working life 2018-2021



In 2021, there were a total of 226 contacts concerning discrimination in the working life. In 2020, the corresponding number was 170, while in 2019 it was 148. In 2018, there were a total of 175 initiated contacts.

### 1.1.3 Strengthening the legal protection of persons with disabilities

The current Non-Discrimination Act was enacted before the UN Convention on the Rights of Persons with Disabilities (CRPD) entered into force in Finland as a law. The starting point of the CRPD is that persons with disabilities can participate in all activities in the society equally. To ensure this, the CRPD requires States Parties to issue regulations on reasonable accommodations that enable participation in individual cases as and prepare proactively for the needs of persons with disabilities by means of Design for All.

The current Finnish Non-Discrimination Act includes an obligation to make reasonable accommodations in situations, in which the conditions do not otherwise allow persons with disabilities to deal with an authority, and receive education, employment and generally available goods and services equally with others. The government proposal that led to the Non-Discrimination Act being enacted also referred to the obligation of actors to prepare for the most common needs of persons with disabilities already in advance. In this way, the legislation already extends beyond the concept of reasonable accommodations, because in accordance with the CRPD, they refer to adapting

functions in individual cases based on the needs stated by the person with a disability.

The provisions of the Non-Discrimination Act do not refer to an obligation to prepare proactively for the needs of persons with disabilities. Courts of law and the National Non-Discrimination and Equality Tribunal have nevertheless taken the provisions of the UN Convention on the Rights of Persons with Disabilities (CRPD), which constitute legal obligations, into account in their decisions and ensured the equal treatment of persons with disabilities in this way. Legal practice shows that the obligation to make reasonable accommodations can also extend to decisions by the authorities concerning a person with a disability, for instance. These situations are no longer about the equal right of persons with disabilities to deal with the authority; instead, the decisions also take the special needs of the applicant due to the disability into account to ensure that the end result is equal.

The Supreme Administrative Court has stated in their decision KHO:2021:189 that the UN Convention on the Rights of Persons with Disabilities (CRPD) and its obligations on for example reasonable accommodations have to be applied as a legal source<sup>5</sup>. The Supreme Administrative Court annulled the decision by the Administrative Court,

in which the court centrally referred to the the preliminary work of the Non-Discrimination Act. In the view of the Ombudsman, these arguments are problematic in the light of the CRPD. The decision in its part shows that the current section on reasonable accommodations of the Non-Discrimination Act does not secure the rights of peoples with disabilities to non-discrimination the same way as the CRPD, which binds Finland, requires.

### **Recommendation:**

The Non-Discrimination Ombudsman considers it important that the obligations of the UN Convention on the Rights of Persons with Disabilities (CRPD) concerning reasonable accommodations are laid down clearly in the Non-Discrimination Act in addition to proactive preparation for the special needs of persons with disabilities by using Design for All. These specifications are important to ensure the realisation of the equal rights of many people with disabilities. Including them in the Non-Discrimination Act is also important because the rights of persons with disabilities and the obligations of different actors should be stated clearly in legislation instead of only being accessible by studying international conventions.

### **The Supreme Administrative Court's decision 2021:189**

The Supreme Administrative Court saw in their decision that Finnair Oyj discriminated against a person with a disability, in a situation in which they had to buy three seats in full price next to each other for a flight. In the case in question, it could not be seen that reducing the price for the extra seats to ensure non-discriminatory treatment of the person with a disability would have been unreasonable for Finnair. Finnair should have had to implement reasonable accommodations for the person with a disability.

The decision of the Supreme Administrative Court is highly significant from the perspective of the rights of persons with disabilities. The decision strengthens especially the true equity of persons with disabilities. The Non-Discrimination Ombudsman took the case to the National Non-Discrimination and Equality Tribunal in 2016. The Tribunal stated in their decision in 2017 that Finnair had discriminated the passenger with a disability. After Finnair complained about the decision, the case went forward all the way to the Supreme Administrative Court.

### **1.1.4 Support of the Non-Discrimination Ombudsman for the victims of discrimination**

The number of complaints from customers to the Non-Discrimination Ombudsman has grown year by year. In the government proposal (19/2014) for the current Non-Discrimination Act, the Ministry of Justice thought that "it can be estimated approximately that the number of customers of the Ombudsman will double due to the reform". The reality has shown, however, that this estimate was much too low. The number of complaints related to discrimination have become more than five times as frequent as at the start between the years 2014 and 2021. While the Ombudsman received 287 complaints related to discrimination in 2014, the Non-Discrimination Ombudsman received a total of 1584 complaints related to discrimination in 2021.

The Non-Discrimination Act makes it possible to address discrimination experienced by an individual and use a process lighter than the legal proceedings that has a low threshold. The Act gives the Ombudsman many tools that complement each other for investigating alleged discrimination and address the cases, if necessary. These methods include making requests for clarification and information, statements with recommendations to remove discrimination and promote equality, promoting reconciliation, which typically includes the payment of compensation to the victim of discrimination, bringing the matter to the

National Non-Discrimination and Equality Tribunal for resolution and in exceptional cases, assisting a victim of discrimination at a court of law.

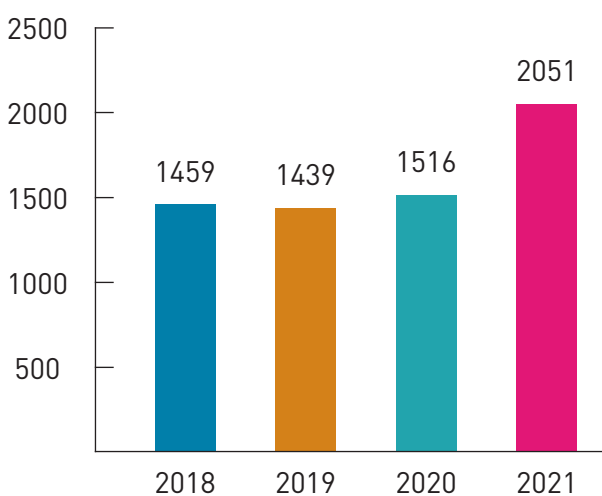
The significant increase in the number of complaints, however, has led to the Ombudsman having to raise the threshold of which matters will be investigated in more detail higher year after year. With the current resources, the Ombudsman is still able to take measures in cases that are clear or that have especially great significance in principle or that are particularly important for the victim of discrimination. Unfortunately often, however, the Ombudsman must settle for advising the party that sent the complaint and providing instructions on their possibilities of proceeding with their case without the assistance of the Ombudsman, even in cases, in which investigation would have been justified at least to some extent based on the complaint. This situation cannot be considered satisfactory.

The Ombudsman's work of addressing discrimination and promoting equality creates a dichotomy. Addressing discrimination is usually reactive, while the work for promotion aims to influence discriminatory structures and operating models to prevent discrimination from occurring at all. In addition to addressing discrimination as described above, the Non-Discrimination Act includes an expectation that the Ombudsman will draw up and commission studies, publish reports and make initiatives; give advice and statements; promote the provision of information, education and training; and participate in European and international cooperation and monitor compliance with Finland's international human rights obligation and the functionality of national legislation in the Ombudsman's area of responsibility. With the current resources, after the number of complaints has increased significantly and is likely to increase further in the future, the Ombudsman's opportunities for carrying out the strategic promotion and advocacy work in addition to addressing discrimination are unfortunately very limited compared to the demands and expectations concerning the Ombudsman.

### Recommendation:

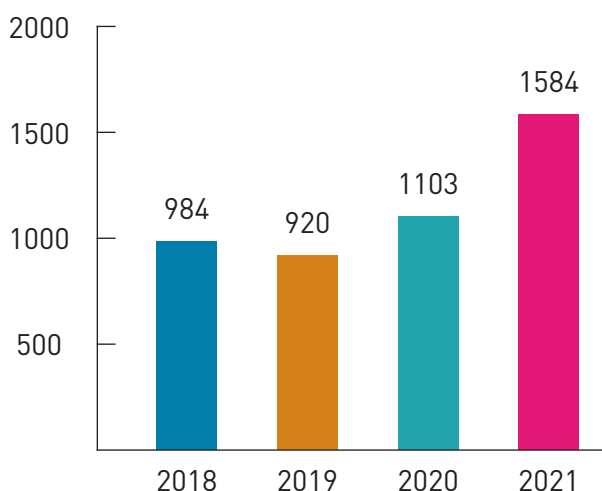
The Non-Discrimination Ombudsman considers it important that in addition to the legal protection included in legislation, attention is also paid to the Ombudsman's opportunities of promoting equality and supporting the victims of discrimination by strengthening the Non-Discrimination Ombudsman's resources so that they match the growth of the number of customers.

### All contacts received by the Ombudsman 2018–2021



In 2021, there was a total of 2,051 contacts. In 2020, the corresponding number was 1,516, in 2019 it was 1,439 and in 2018 it was 1,459.

### Contacts concerning discrimination 2018–2021



In 2021, there was a total of 1,584 contacts concerning discrimination. In 2020, the corresponding number was 1,103, in 2019 it was 920 and in 2018 it was 984.

## 1.2 Equality must be promoted actively in the work of the authorities

The purpose of promoting equality is to prevent discrimination, ensure the de facto equality of all people and remove inequality caused by discrimination in the society. Authorities and public actors play a key role in promoting equality and ensuring the non-discrimination of people in the society.

According to the Non-Discrimination Act, the authorities, private parties with public administration duties, education providers and employers are obliged to assess and promote equality in their activities. In addition, these parties are obliged to draw up an equality plan on the measures used to promote equality. Of employers and parties with public administration duties, the equality planning obligation applies to those who employ at least 30 people regularly.

Strengthening equality requires strong leadership from organisations as well as clear communication about how the obligation to promote equality is a self-evident part of a modern, legally operating school, workplace or agency.



**Equality planning is an effective tool and a continuous development process that can improve the quality of activities by the authorities significantly.**

The Non-Discrimination Ombudsman emphasises that the authorities must actively promote equality in their operations and ensure that equality is also taken into account comprehensively with regard to different population groups. This section discusses non-discrimination and the promotion of equality from the perspective of the authorities and public actors in particular. The section discusses the need to make the equality planning by the authorities more effective and improve equality impact assessment in bill drafting. In addition,

the section examines the need to emphasise the prevention of discrimination and promotion of equality in the operation of security authorities and social and health care services. Finally, the necessity of improving accessibility is discussed.

### 1.2.1 Equality planning by the authorities and support for it must be intensified significantly

Equality planning is a part of the obligation of the authorities to promote equality, laid down in the Non-discrimination Act. The aim of the obligation is to ensure that the authorities commit to systematic and goal-oriented work for promoting equality and that they also document this work. Thus the promotion work becomes visible, trackable and openly announced. The obligation of the authorities to promote equality specifies the obligation of public authorities to ensure the realisation of basic and human rights based on section 22 of the Constitution of Finland. In fact, in its statement on the enactment of the Non-discrimination Act, the Constitutional Law Committee referred to section 22, among other things, and found that equality plans play a central role especially with regards to implementing equality in reality and preventing discrimination while carrying out public administration duties<sup>6</sup>.

The promotion obligation aims at the realisation of actual equality in the activities of the authorities. It is essential that the planning is based on an equality assessment of the initial situation, based on which the goals and the concrete measures that specify them are set, and that the realisation of the goals is monitored. When implemented like this, equality planning is an effective tool and a continuous development process that can improve the quality of activities by the authorities significantly.

An important part of the potential of equality planning in the development of the activities of authorities has been left unused, however. There are several reasons for this, the most important one of which is the attitude towards equality planning, seen primarily as an obligation to draw up a stand-alone planning document. In fact, the entries in the plans are often ambiguous and contain little information on how the assessment of the initial situation of equality was carried out, for instance.

The monitoring work of the Non-Discrimination Ombudsman regularly finds out that authorities have no equality plan that covers their activities as required by law. According to the information published by the National Institute for Health and Welfare in November 2021, only 45% of municipalities have drawn up an equality plan on the activities of the authorities<sup>7</sup>. In cases, in which equality plans are combined with the gender equality plan, the focus of the investigation seems to move towards gender equality. Correspondingly, when personnel policy plans and plans on the activities of the authorities are combined, the perspective of the work community is typically emphasised.

The Non-Discrimination Ombudsman has already required for some years that the ministries, as a part of their obligation to promote equality, provide sufficient support for the authorities in their administrative branch and monitor the status of equality planning in the agencies under them. The Ombudsman has encouraged ministries to link the work for promoting equality to their administrative guidance, such as performance guidance.

In order to develop the steering and monitoring of ministries, information is nevertheless required about the work done within the authorities in the administrative branch and its quality, as well as the need for support. The Non-Discrimination Ombudsman is currently developing a tool and indicators to make this possible. In order to improve the quality of equality planning with regard to the activities of the authorities, the Non-Discrimination Ombudsman participates in the Drivers of Equality project (in Finnish) funded by the EU Commission and coordinated by the Ministry of Justice in 2021–2022. In the project, the Ombudsman develops a reporting tool that ministries can use to obtain information from the authorities in their administrative branch on equality planning, measures to promote equality as well as the issues in the work on promoting equality with which the authorities need support. The information is also intended to support the implementation of more effective legality control.

So that the planning work can meet the actual development needs of the authority's operating environment, the equality assessment must be carried out thoroughly. Without a sufficient assessment, it is likely that the goals and measures

set will not serve the actual development needs in the authority's activities. The assessment must be based on information on different grounds for discrimination and the relevant population and customer groups. Otherwise, the development targets and measures may focus only on those customer groups, whose needs the administrative branch already has statistics or research information available.

In fact, it is particularly important to pay attention to the knowledge base and its deficiencies when promoting equality and conducting the assessment that is part of the planning process. Ministries and other authorities must invest more intensively than today in systematically producing information on the equal realisation of rights and identification of structural discrimination. In statements issued in connection with the health and social services reform, the Ombudsman has also emphasised the importance of the new administrative level, the wellbeing services counties, from the perspective of equality. Both municipalities as well as the wellbeing services counties must ensure that their services reach all residents equally, and equality planning is also a key tool for them.

Equality planning is an important tool for bringing equality into the everyday life of all people irrespective of their background and characteristics and regardless of whether the actor is an authority, education provider or employer. A good knowledge base and well-working planning tools help organisations make equality planning a functional, developing part of the organisation's strategic planning, operation and assessment of operations.





### Recommendations:

- As a part of the steering and monitoring of the administrative branch, ministries should ensure that the authorities in the administrative branch draw up statutory equality plans of high quality and that the plans are updated regularly.
- Wellbeing services counties and municipalities should draw up effective statutory equality plans that are based on an assessment. It is important that the Association of Finnish Local and Regional Authorities supports this work.
- In central government, resources should be reserved for creating tools and models to support equality planning, such as the tool developed in the project 'Drivers of Equality'.
- The Government and the ministries should invest in systematically producing information on the equal realisation of rights and identification of structural discrimination. The information is necessary for promoting equality.

### 1.2.2 Equality impact assessment in bill drafting must be improved

As a part of the Non-Discrimination Ombudsman's work to promote equality, the Ombudsman issues statements concerning the bill drafting by ministries, among other things. For a long time, the Ombudsman has noticed that the equality impact assessment in bill drafting seems sparse, and even when it is carried out, it appears incomplete.

The Non-Discrimination Ombudsman has observed issues, such as hearings arranged late and with too few participants, as well as missing and too narrow assessments, in which attention has only been paid to one ground for discrimination or minority group. In legislative proposals or their drafts, attention may be paid to equality on a general level, or it may be stated that the proposal either promotes equality or does not have any impact on equality without drawing up a concrete equality impact assessment.



### An effective and comprehensive equality impact assessment in the drafting of statutes is a very important method of promoting the realisation of equality.

The varying hearing practices affect the scope and comprehensiveness of equality impact assessments. At the draft stage of the report or government proposal in certain key projects, the Ombudsman has presented the comment that parties such as organisations for people with disabilities should be heard about the issue. Not all ministries have requested a comment from the Non-Discrimination Ombudsman concerning legislative proposals, either. In recent years, however, the hearing practices seem to have improved.

The lack of knowledge and expertise related to equality is also reflected on bill drafting. In general, ministries have a clear need to increase knowledge and expertise related to equality, the prohibition of discrimination, as well as equality impact assessment. This need has come up when the Ombudsman has monitored the implementation of the obligation to promote equality in accordance with section 4 of the Non-Discrimination Act. The Ombudsman recommends that the ministries should review the implementation of equality impact assessment during bill drafting regularly in connection with updating the equality promotion plan, for instance. If needed, the required measures for matters such as training should also be recorded in the equality promotion plans in addition to concrete goals that can be monitored concerning the number of equality impact assessments in draft government proposals.

The lack of information about discrimination and equality, and the different population groups' situation in life and the realisation of their rights in general, is a significant obstacle to sufficient equality impact assessment. In fact, the Ombudsman has also noted with regards to bill drafting that the Government and the ministries must increase the availability and production of information concerning discrimination and equality.

Currently, the content of the instructions on equality impact assessments is not sufficient. The Ombudsman has noted this in the statements submitted to the Ministry of Justice and to the Parliament in 2021<sup>8</sup>. It is important that this problem is corrected during the update of the instructions for the impact assessment of legislation that is in progress at the Ministry of Justice. The Ombudsman considers it necessary to commission a separate report on equality impact assessments in bill drafting a few years after the updated instructions have been issued at the latest.

The Ombudsman finds that an equality impact assessment must be made as a part of the fundamental and human rights impact assessment whenever a significant impact on the equality of different population groups is involved. Together with parties such as the relevant interest groups, the legislator should identify the groups of people that can be assumed to be significantly affected by the legislation being drafted. With regard to these groups, a more thorough impact assessment compared to the preliminary assessment must be conducted concerning both the direct and the indirect impact. The requirement of significance must also be considered in relation to the lives of the people in question instead of the size of the group, because equality impacts are often significant specifically with regard to minority groups. The general obligation of authorities to promote equality (Non-Discrimination Act, section 5) and the obligation of public authorities to guarantee the observance of basic rights and liberties and human rights (the Constitution of Finland, section 22) are in favour of systematically conducting equality impact assessments in bill drafting.

An effective and comprehensive equality impact assessment in the drafting of statutes is a very important method of promoting the realisation of equality. Taking equality correctly into account during bill drafting also combats structural discrimination.

### **Recommendations:**

- The quality of impact assessment in government proposals should be monitored in the work of the parliamentary committees.
- Instructions for equality impact assessments must be made significantly more specific
- An equality impact assessment should be carried out during bill drafting as a part of the fundamental and human rights impact assessment whenever a significant impact is involved. The population groups assessed must be identified at an early stage of bill drafting in cooperation with the relevant interest groups, if necessary.
- The ministries should make additional investments in training and take advantage of equality planning as an opportunity to evaluate and promote the realisation of assessments in bill drafting.
- The Government must improve the content of the knowledge base available for bill drafting so that it supports carrying out equality impact assessments of high quality.

### **1.2.3 Law enforcement authorities must invest in anti-discrimination measures aimed at promoting equality**

#### **Racism and discrimination based on ethnic origin must be addressed more systematically**

Racism and discrimination based on ethnic origin in the operation of law enforcement authorities has been a much spoken about topic in several countries in the recent years. Lately, the discussion has been fuelled especially by the Black Lives Matter movement against racially motivated police violence and discrimination. Racism, discrimination and ethnic profiling in the activities of the police have also been discussed recently in Finland.



The discussion about the risks of discrimination in using artificial intelligence in proactive policing and facial recognition has also expanded. The impact of racism, profiling and discrimination based on origin in the society is serious, and it must be addressed effectively within the law enforcement authorities, such as the police, the Border Guard, the Customs and the Defence Forces.



**For several years, the Non-Discrimination Ombudsman has called the attention of the Ministry of the Interior, the law enforcement authorities and the private security sector to prevent profiling and discrimination based on ethnic origin.**

In the spring of 2021 the UN Human Rights Committee expressed its concern to Finland about reported incidents of ethnic profiling by the police<sup>9</sup>. The Committee required Finland to take measures to ensure the prohibition of ethnic profiling, in law and in practice, and to provide law enforcement officials with training.

Ethnic profiling refers to actions and practices by law enforcement authorities, in which measures or monitoring are targeted on individuals based on characteristics related to their real or assumed origin, such as skin colour, language or clothing that suggests a certain religion or culture, rather than the individuals' behaviour or objective proof.

In recent years, experiences related to ethnic profiling have been discussed in reports, especially the study by the University of Helsinki, 'The Stopped' (2018)<sup>10</sup>. The study shows that people have experienced discrimination in connection with police activities, and especially in activities by guards. The report on discrimination experienced by persons with an African background published by the Non-Discrimination Ombudsman in 2020 shows that a little over half of the respondents

have experienced ethnic profiling by the police or guards, for instance<sup>11</sup>. The reports reveal that both individuals profiled as foreigners due to their appearance as well as the Roma experience discrimination based on ethnic origin in Finland.

For several years, the Non-Discrimination Ombudsman has called the attention of the Ministry of the Interior, the law enforcement authorities and the private security sector to prevent profiling and discrimination based on ethnic origin. The Ombudsman has also highlighted equality planning as an effective method of assessing and committing to the necessary measures to prevent discrimination.

Ethnic profiling is a part of structural discrimination and racism, and it is linked to conscious or unconscious discriminatory stereotypes. In addition to the actions of a single official, ethnic profiling may also manifest in practices generally followed by law enforcement authorities. Ethnic profiling has wide-ranging and serious consequences in the society. Ethnic profiling may undermine trust in the police and other authorities, diminish the feeling of belonging in the society and increase hate speech and discriminatory attitudes. For individuals targeted by ethnic profiling, it is demeaning and othering.

In the end of 2020, the UN Committee on the Elimination of Racial Discrimination issued a comprehensive general recommendation on preventing and combating racial profiling by law enforcement officials (CERD/C/GC/36, 17 December 2020). The Committee noted that ethnic profiling by the police had increased globally in recent years and recommended that the States parties should review the content of the policies, as well as the practices and training of the police. The Non-Discrimination Ombudsman recommended the Ministry of the Interior and the National Police Board that Finland should assess the need to implement the general comments of the Committee. In the beginning of 2022, the Ministry of the Interior stated that they would start action due to the Ombudsman's recommendations.

In addition, the Ombudsman noted that the law enforcement authorities should ensure transparency with regard to the measures against profiling and ethnic discrimination and their impact, and they should also discuss and communicate about

them more. Transparency increases trust towards the authorities, and practices can be developed through discussion.

### **A police operation targeting the Roma indicate problems related to discrimination based on ethnic origin within the police**

In 2021, it was revealed that the Helsinki Police Department had carried out an extensive operation called KURI1 that targeted Roma people in 2013–2015. Based on the information requested from the police, the Non-Discrimination Ombudsman found that a presumption of discrimination was established in the case.

In the assessment of the Ombudsman, the fact that the operation was only revealed in 2021, and its insufficient processing by the police, show that there are deficiencies in the police related to identifying, preventing and addressing discrimination.

The Ombudsman gave a statement related to the operation and issued recommendations for further measures to the National Police Board and the Ministry of the Interior in late 2021. The National Police Board had independently drawn up a legality control report of the operation, but in the Ombudsman's opinion, the report and the further measures listed in it were not sufficient and the interpretation of the prohibition against discrimination in the case was not correct<sup>12</sup>.

The operation called KURI1 was ordered to be established in 2013, and the activities were started with instructions stating that the goal of the operation was to prevent shootings and provide information for resolving cases that were already being investigated. The entry of the instructions concerning the Roma, on which additional control and monitoring was to be focused, can be understood to mean that the targets include any individual assumed to be Roma and moving in a car or as a part of a group. The instructions also required a low threshold for intervening in all minor offences discovered during the monitoring. The instructions did not pay attention to the prohibition of discrimination, and this was apparently not done in monitoring the implementation of the operation, either. The Ombudsman found that the operation appeared to be based on discriminatory instructions.

According to the views of the Roma community received by the Ombudsman, knowledge of the

operation has undermined the trust of the Roma in the police. Finding out about the operation has sparked several justified questions within the Roma community, such as whether the information about the Roma targeted by the monitoring is still available to the police, and how extensively did the operation affect the Roma.

In December 2021, the Non-Discrimination Ombudsman issued a recommendation to the National Police Board and the Ministry of the Interior for further measures so that the operating methods and impact of the KURI1 operation could be sufficiently investigated further and that the matter could be discussed with the Roma community<sup>13</sup>. It is estimated that the investigation is going to continue through the spring of 2022. In the view of the Ombudsman, sufficient investigation and open discussion of the events is especially crucial to avoid discrimination based on ethnic origin in the future and to ensure the success of measures to strengthen the trust of the Roma towards the police. The Roma also have the right to receive sufficient information about the matter.

### **Other observations on compliance with the prohibition of discrimination by the law enforcement authorities**

In recent years, the Ombudsman has discussed situations and questions related to the prohibition of discrimination based on ethnic origin concerning the activities of the police, the Border Guard and the Customs. The Ombudsman has issued recommendations to prevent discrimination and improve equality planning.

According to the Ombudsman's observations, the law enforcement authorities have started to pay more attention to the prohibition of discrimination and ethnic profiling. For example, more training has been added and goals for developing it have been recorded in equality plans. Commitment to and measures for preventing discrimination must still be systematically intensified at all levels of the organisations.

The law enforcement authorities do not yet understand or pay sufficient attention to the contents of the prohibition of discrimination based on ethnic origin or, for instance, the consideration of proportionality related to it. Ethnic origin as a basis for discrimination enjoys particularly strong pro-

tection in legislation, and different treatment on the basis of ethnicity is acceptable in only certain very rare cases. The prohibition of ethnic profiling cannot be understood as a separate and more limited prohibition compared to the prohibition of ethnic discrimination. The effects of assumptions related to ethnic origin on the decision-making by the authorities may also be subconscious.

Permanent structures for training on equality and the prohibition of ethnic discrimination must be created both among the law enforcement authorities as well as private operators in the field. Those doing practical work in the police, at the borders, in the Customs and as guards need regular training from different perspectives.

The Non-Discrimination Ombudsman emphasises that the commitment of the management of law enforcement authorities, such as the police commissioners in charge of police departments, to effective training and instructions is essential in rooting out discrimination and racism from the activities of the law enforcement authorities. In addition, transparency of policies and measures is needed.

### **The section of law on the monitoring of foreign nationals and its provision intended as a prohibition of ethnic profiling need clarification**

Positive development has occurred in the training of the police on the monitoring of foreign nationals, and training on the prohibition of discrimination in the monitoring of foreign nationals has been increased. In the view of the Ombudsman, some of the training has started to include teaching that importance should not be placed on the ethnic origin of an individual when carrying out monitoring of foreign nationals. This policy is the right starting point for the monitoring of foreign nationals.

Because the monitoring of foreign nationals is, by nature, an activity that carries a risk of discrimination, the regulations and written instructions related to it must be especially clear. In the opinion of the Ombudsman, the current situation is not satisfactory, and both the law and the internal instructions should be reformed.

In connection with the processing of the case concerning activities by the police that is pending in the Supreme Administrative Court

(21735/03.04.04.04.01/2021), and after observing the instructions of the police on the monitoring of foreign nationals for several years, the Ombudsman is of the opinion that there is a need to clarify section 129a of the Aliens Act on carrying out monitoring of foreign nationals in order to prevent ethnic discrimination and profiling. The current instructions on the monitoring of foreign nationals issued by the National Police Board and the Border Guard should also be changed and clarified with regard to certain parts in order to avoid the risk of discrimination in the monitoring of foreign nationals.

The key issue with section 129a of the Aliens Act and especially its subsection 3 is that it does not prevent the justification of measures related to the inspection of a person by the person's real or assumed ethnic origin in a sufficient way that would ensure the realisation of the prohibition of ethnic discrimination. The provision allows targeting monitoring at a specific individual based on that individual's real or assumed ethnic origin, if the origin has less than critical importance with regard to the selection. However, the provision and its grounds do not specify in any further detail how the prohibition concerning the critical importance of origin as the basis of the monitoring measure should be interpreted in practice. Neither the grounds nor the instruction of the law enforcement authorities state clearly the requirement to follow non-discrimination.

The aim of the provision has been to emphasise the realisation of equality in the monitoring of foreign nationals, and the objective has been to provide for a prohibition of ethnic profiling. However, in practice the provision does not function in accordance with its aim, and it should be reformed in its entirety.

When reforming the provision, it is essential to take the key elements of ethnic profiling as a phenomenon into account in addition to the serious harm it causes both to the individuals targeted by it as well as the society in a wider context.

Clarity in section 129a of the Aliens Act is particularly important, because it is not acceptable or permitted by the prohibition of discrimination that due to their assumed ethnicity, some individuals are more exposed than others to measures of monitoring foreign nationals, such as identity

checks. Targeting monitoring of foreign nationals at a specific individual due to their skin colour, for instance, is humiliating and othering as well as discriminatory.

### **There is a significant need to develop the identification and investigation of hate crimes**

According to the study Hate crimes and their handling in the criminal process, implemented by the Police University College and published by the Ministry of Justice, there are significant deficiencies in identifying and handling hate as a motive throughout the whole criminal procedure<sup>14</sup>. The police does not identify all hate crimes, and the suspicion of a potential hate motive of an offence is not always relayed to the prosecutor. According to the study, the severity of the sentence is rarely increased based on a hate motive. In addition, in as many as a half of the cases where the severity of the punishment was increased due to a hate motive, the District Court did not explain how the hate motive actually increased the severity of the sentence. The grounds were also incomplete in cases in which a more severe sentence was not imposed despite the prosecutor's demands. Insufficient grounds can deteriorate trust in the functioning of the justice system, and thereby maintain structures that make under-reporting possible.

The study recommended compulsory use of the hate crime code for the police when filing reports of an offence, intensifying collaboration in pre-trial investigation and updating the instructions on police interrogation. The Ombudsman considers the recommendations important and their implementation necessary.

In the Ombudsman's opinion, it is necessary to ensure that training on hate crimes is provided and that the police are required to participate in such training. It is crucial that the National Police Board, the management of police departments and the Police University College highlight the importance of training on hate crime as well as identifying hate crimes and investigating them effectively.

### **The law enforcement authorities must promote equality systematically**

The Non-Discrimination Act gives the authorities a specific obligation to promote equality. It is positive to note that in recent years, the law enforcement authorities have updated their operational equality plans in accordance with section 5 of the Non-Discrimination Act, and the quality of the plans has improved. However, what is important is what the goals set mean in practice and how the management of the organisations commits to the promotion work and supports its implementation.

The Ombudsman emphasises that police departments must draw up operational equality plans that are genuinely based on their own survey of the situation and a sufficient assessment. In the assessment, taking the different grounds for discrimination into account comprehensively is the key. Effective implementation of the obligation to promote equality requires information about the experiences of different population and minority groups concerning safety and security as well as law enforcement authorities. The Ministry of the Interior commissioned a study on the experiences of safety and security among vulnerable groups as a basis for a report on internal security, and the report pays attention to the safety of population groups in a vulnerable position<sup>15</sup>. In its equality plan, updated in 2021, the National Police Board has decided to study the experiences of different minority groups with the police. The Ombudsman considers it important that the study is conducted independently and that it will be comprehensive enough. The information gained must be used effectively in targeting the further measures.

In addition, under-reporting must be taken into account in promoting equality in the safety sector: most of the people who have experienced discrimination do not report their experience of discrimination at all. The law enforcement authorities, as all other authorities, must actively develop methods to reduce under-reporting. One important method involves measures to increase trust in the police and the other authorities.

Diversity among law enforcement authorities is an essential measure for promoting equality. It is important that the personnel of the law enforcement authorities reflect the diversity of our society. For example, there are necessary measures in

progress at the Police University College intended to strengthen the recruitment of members of ethnic minorities to police training. This work must continue on a long-term basis.

### **The importance of the private security sector and guarding activities increases**

The importance of the private security sector as a security operator in public spaces and different functions of the society has increased. In fact, it is necessary to focus more attention on how equality and the prohibition of discrimination are realised in guarding and security steward services.

The Non-Discrimination Ombudsman regularly handles reports related to experiences of ethnic discrimination and profiling in guarding services in particular. The Ombudsman has also issued opinions for the prosecutor in some discrimination offence cases under consideration of charges in recent years. The reports are often about situations, in which individuals have felt that a guard has followed them, targeted them for an inspection of items or prevented them from visiting a store without justification based on their origin. In such cases, the person submitting the report is often Roma. Studies also show that members of minorities experience discrimination by guards.

For several years, the Ombudsman has done advocacy work towards operators in the field, and especially the association of Finnish security firms Suomen Vartioliikkeiden Liitto, in promoting equality in the practices in the field. The Ombudsman has emphasised the obligation to promote equality, which applies to companies in the private security sector when they are acting as employers or carrying out public administration duties.

One of the measures recorded in the Government Action Plan for Combating Racism is the goal of improving equality in the operations of security firms. In the Ombudsman's opinion, this goal assigned as the responsibility of the Ministry of the Interior is needed. There is a need to examine how the prohibition of discrimination is addressed in the training of guards, for instance. It is also necessary to assess the effectiveness of the monitoring of guarding services and, if needed, intensify the monitoring of guarding by the National Police Board and police departments.

### **Recommendations:**

- Section 129a of the Aliens Act must be reformed due to the risk of discrimination in the monitoring of foreign nationals, and because the provision is unclear. The instructions of authorities carrying out monitoring of foreign nationals must be clarified.
- The prevention of ethnic discrimination and profiling in the activities of law enforcement authorities must be developed. A national assessment of the implementation of the General Recommendation 36 of the UN Committee on the Elimination of Racial Discrimination must be carried out.
- The extensive 'KURI1' operation targeting the Roma by the Helsinki Police Department must be investigated sufficiently, the issue must be discussed with the Roma community and the necessary measures must be taken.
- Enough information to target effective measures must be produced on the experiences of safety and security of different population groups, and their trust in guards and the authorities.
- Training on hate crimes provided for the police must be increased. The identification and investigation of hate crimes must be developed.
- Compliance with the prohibition of discrimination and discussion of the obligations to promote equality must be intensified in the monitoring of the private guarding sector and the training of guards.



### **The prohibition of ethnic discrimination in the monitoring of foreign nationals**

A case that, for its part, demonstrates the problems with section 129a of the Aliens Act is currently pending in the Supreme Administrative Court. The prohibition of ethnic discrimination in the monitoring of prostitution and foreign nationals is being investigated within the framework of the case. The Ombudsman finds that discrimination and ethnic profiling were involved in the situation that occurred in 2016 as well as the case involving the Helsinki Police Department. The Ombudsman has submitted comprehensive statements in accordance with section 27 of the Non-Discrimination Act to the Helsinki Administrative Court as well as the Supreme Administrative Court.

In its decision issued in 2021 (01185/19/1205), the Administrative Court repealed the decision of the National Non-Discrimination and Equality Tribunal issued in the case in 2018 and found that the police had not acted in a discriminatory manner. In the assessment of the Ombudsman, however, the decision of the Administrative Court has not taken the national and international regulations on the prohibition of discrimination comprehensively into account. Among other things, the Administrative Court stated in its decision that the expected harm caused to the individuals in question due to being targeted by monitoring measures would only be a short-term stop to present identification documents. In the statement sent to the Supreme Administrative Court, the Ombudsman emphasised, among other things, the fact that the personal harm caused by being stopped based on one's skin colour is serious and that the negative impact of ethnic profiling in the society is far-reaching.

### **The realisation of the rights of Swedish-speaking people must be ensured**

The Constitution of Finland and the Language Act safeguard the right of Swedish-speaking people to use their language when they deal with the authorities. The authorities are obliged to ensure that using the services and handling matters is possible in Swedish and in Finnish. According to the complaints submitted to the Non-Discrimination Ombudsman, however, there are problems with the realisation of linguistic rights in all aspects of life, such as in social welfare and health care services.

According to [the report on the application of language legislation](#) published in December 2021 by the Government, there are significant deficiencies in the realisation of linguistic rights, such as the rights of Swedish-speaking people<sup>16</sup>. The Non-Discrimination Ombudsman emphasises the authorities' obligation to ensure that the linguistic rights are fully realised. The authorities must also effectively enforce the obligation to promote equality laid down in the Non-Discrimination Act.

According to the decision of the National Non-Discrimination and Equality Tribunal in November 2021, the police discriminated against a Swedish-speaking person when their native language was not used consistently in connection with being apprehended<sup>17</sup>. The Non-Discrimination Ombudsman brought the case to the National Non-Discrimination and Equality Tribunal for processing on behalf of the person in 2019. The Tribunal issued the first decision in the case in the spring of 2020. The police appealed the decision to the Helsinki Administrative Court and provided new accounts concerning the case. The Administrative Court found that due to the new accounts provided by the police, the Tribunal must hear the case again. The Tribunal reassessed the case, and in the

decision issued in November 2021, it found that the police had discriminated against the Swedish-speaking person. The decision is not final, because the police have also appealed the second decision to the Administrative Court.

In connection with the processing of the case concerning the police, the Ombudsman has emphasised that in situations that are challenging with regard to the fundamental rights of a person, such as when restricting physical liberty, it is extremely important to ensure that linguistic rights are realised in a non-discriminatory manner. According to the Language Act, the authorities must ensure independently that the language rights are realised in practice.

#### **1.2.4 Social welfare and healthcare play a central role in the equality of people**

Social welfare and healthcare as well as the social security system are the cornerstones of the Finnish welfare society. The way equality is realised in these services forms a key part of the equality for everyone and protection against harassment guaranteed by section 6 of the Constitution of Finland.

Issues related to equality and discrimination in social welfare and healthcare can appear both as widespread social upheavals as well as practices that may become discriminatory if they continue for a long time. This section discusses two historical events in particular that have had a significant impact on social welfare and healthcare in the past four years and will continue to do so in the future: the coronavirus pandemic and the health and social services reform. The first of these was unforeseen, while the second was a culmination of nearly two decades of studies and bill drafting work.

The coronavirus pandemic has had a deep impact on the society as a whole. Because social welfare and healthcare have played a central role in managing the pandemic, they should also be discussed from this perspective. As for the health and social services reform, it will have a wide-

spread effect on the structures of general government, the position of municipalities, the balance of regional politics as well as many other issues. How well the reform will be able to meet the needs for services of all residents of Finland and support their wellbeing must be considered a key indicator of the success of the reform. Special attention has to be paid to those solutions and statements concerning the social welfare and healthcare system that have highlighted equality issues and discrimination in the services when building the new wellbeing services counties. Out of these, the prohibition of donating blood that applies to male couples, the practices of municipal disability services in supporting the inclusion of people with disabilities in working life, as well as the practices in specialised medical care have been selected for discussion in this section.

#### **The consideration of equality must be done carefully in exceptional situations**

The coronavirus pandemic has shaken up Finland and the whole world ever since early 2020. In combating the pandemic, Finland – as well as other countries – has restricted the fundamental rights of citizens and other residents of the country in many ways. In fact, the fight against the pandemic has created an unprecedented public discussion of the principles of a state governed by law that can be used to limit fundamental rights. Of these, the one that has been discussed the most is the requirement of proportionality, according to which the necessary restrictive measures must be selected so that they violate the fundamental rights the least amount possible, such as the right to meet family members, go to school and carry out a profession.

As the coronavirus situation fluctuates, it has been necessary to evaluate in the decision-making again and again which restrictive measures are the most necessary and effective for keeping the disease in check at a given moment. When selecting these measures, it has also been necessary to assess the effects of the measures on the position of vulnerable groups or those already in a poor position in particular. The Non-Discrimination Ombudsman has specifically brought up the need for a critical assessment of restrictive measures that affect the position of the elderly,

persons with disabilities or children. During the early stages of the pandemic in particular, the Non-Discrimination Ombudsman highlighted the use of multilingual communication in order to reach ethnic minorities. The situation did improve, but the communication has still not reached the immigrant population completely.

In the statement to the Deputy Parliamentary Ombudsman, the Non-Discrimination Ombudsman noted that the restrictions of the freedom of movement affecting persons over 70 years of age or persons with disabilities during the early stages of the pandemic could be considered discriminatory, because they were not based on the law and the principle of proportionality was not sufficiently followed in their implementation. The Ombudsman also criticised the way in which the restrictions of movement of the elderly were referred to as obligations in the communications by the Government even though juridically such restrictions can only be justified by law, meaning that in practice they were in fact recommendations. In the statements during the pandemic, the Ombudsman has emphasised that the justification of restrictive measures must always be assessed according to the prevailing situation of the infectious disease at the time. This means that the assessment of the proportionality of restrictive measures will also change over time and according to the situation.

### **Equality must be taken comprehensively into account in planning the operation of wellbeing services counties**

In 2023, the 20 wellbeing services counties will take over the responsibility of providing social and healthcare as well as rescue services from municipalities. At the same time, the largest reform of the service system in Finland in decades will be carried out. During the many stages of the preparation process, the Non-Discrimination Ombudsman has monitored the preparations and issued statements both to the Ministry of Social Affairs and Health as well as for parliamentary proceedings.

In the statements, the Ombudsman considered putting healthcare and social services together in wellbeing services counties with a larger population base as worthwhile in itself. These counties have better resources for providing services for

members of minorities and meeting the individual needs of persons with disabilities, for instance. However, the realisation of equality requires taking equality comprehensively into account in the preparation and planning of the operation of the wellbeing services counties. The strategy and the equality planning of the wellbeing services counties play an extremely important role, and their preparation must be based on carefully mapping the situations of different population groups and their service needs. Elsewhere in this report, such as in the section on housing, the importance of equality planning by the rescue authorities as a part of the wellbeing service county as a whole has been highlighted. In addition to the Non-Discrimination Act, the contents of the Convention on the Rights of Persons with Disabilities (CRPD) must be taken comprehensively into account in this planning.

In the preparations, the Ombudsman drew attention to matters such as the accessibility of premises, the accessibility and availability of communications and access to information in the different languages of the area. With regard to the provision of services, the Ombudsman emphasised, among other things, the accessibility of social welfare and healthcare premises and suggested that accessibility information on all locations in the wellbeing services counties should be made available in the premises information system of the wellbeing services counties. The system will be maintained by a joint centre of excellence on premises and real estate administration of the wellbeing services counties.

The realisation of linguistic rights with regard to Swedish, Sámi and sign language is also a very central factor in the realisation of equality. The Ombudsman suggested that with regard to the Sámi language, an obligation to provide services in the Sámi language in the wellbeing services county of the Sámi homeland should be prescribed by law in the same way as the obligation to provide services in Swedish. Regarding sign language, the Ombudsman found that providing interpretation should be prescribed by law as an obligation for the wellbeing services counties.

The Ombudsman considers it positive that the approved Act on Wellbeing Services Counties included a requirement on the accessibility



and availability of communications. Likewise, a requirement on the equal provision of services as well as their availability and accessibility has been laid down in the Act on the Provision of Social Welfare and Healthcare. In contrast, the entries on providing services in the Sámi language and interpretation of the sign language and other languages in the Act on the Provision of Social Welfare and Healthcare have been left fairly open. Their realisation must be monitored carefully, as already noted in the parliamentary proceedings. With regard to the accessibility of premises, it is important that the centre of excellence on premises and real estate administration ensures that they have expertise concerning accessibility and the needs of persons with disabilities.

In the statement, the Ombudsman also noted that in addition to the wellbeing services counties as a whole, the reform of the legislation on disability services is extremely important from the perspective of the rights of persons with disabilities. The Act on the Provision of Social Welfare and Healthcare also includes general principles that are important from the perspective of disability services that require specification and a fundamental change in the way of thinking on the way towards real equality for people with disabilities.

### **Recommendations:**

- The Convention on the Rights of Persons with Disabilities as well as the Non-Discrimination Act must be taken comprehensively into account in the wellbeing and service strategies of the wellbeing services counties.
- The financial framework of wellbeing services counties must be monitored carefully so that the subjective rights of persons with disabilities are realised, among other things.
- The realisation of linguistic rights must be closely supervised in the government steering of wellbeing services areas, especially regarding services in Swedish, Sámi and sign language.

### **Disability services to support the actual inclusion of people with disabilities**

Along with the health and social services reform, a reform of the Disability Services Act will be implemented and new legislation enacted. The new Act will include provisions on special social welfare services provided for persons with disabilities. At the same time, the current Disability Services Act and the Act on Special Care for People with Intellectual Disabilities will be repealed. According to the Government Programme, the goal is to take the individual needs of persons with disabilities better into account in the future. The goals recorded for the reform include the implementation of equality, inclusion and participation of persons with disabilities, supporting the realisation of independent life and right of self-determination of persons with disabilities, removing obstacles against the equality, inclusion and participation of persons with disabilities, as well as guaranteeing services for persons with disabilities that are sufficient and of high quality and that meet their individual needs.

In 2021–2022, the Non-Discrimination Ombudsman implemented an extensive study of the effect of transport services and personal assistance in accordance with the Disability Services Act as enablers of working life for persons with disabilities. The objects of study included potential regional differences and the way transport services and personal assistance affect the inclusion and employment of persons with disabilities. The realisation of the rights of persons with disabilities in the appeal process all the way to the highest courts was also studied.

For the study, the Non-Discrimination Ombudsman requested information from thirteen authorities of different sizes applying the Disability Services Act all around Finland. The Ombudsman requested general information on the number of decisions issued on transport services or personal assistance in accordance with the Disability Services Act, the number of decisions issued on requests for administrative review concerning them, as well as a separate set of information on matters related to employment. Furthermore, the Ombudsman requested statistics on the number of cases, in which the body responsible for requests for administrative review changed the decision

of the officeholder concerning transport services and personal assistance in accordance with the Disability Services Act, as well as the number of amended decisions by an officeholder linked to working life. The period of study was 2019–2020. The study also included decisions of Administrative Courts in 2019–2020 concerning disability services applied for needs related to working life. In addition to this, a large survey was used to map the views of the actors of Councils on Disability in the areas studied concerning disability services and the realisation of rights.

Regional differences in disability services came up as a central observation of the study. There are major differences between municipalities and joint municipal authorities in the practices of granting services, the numbers of complaints and the grounds for decisions. The situation places people with disabilities in an unequal position depending on where they live. As the disability services are transferred to the wellbeing services counties, this means that special attention must be paid to ensuring that the practices are as uniform as possible across the counties. The reform of the Disability Services Act also plays a key role in this. When the Disability Services Act is reformed, there should be as little room as possible for regional variation in taking individual needs into account compared to the purpose of the Act.

The report also shows that the officeholders and court instances primarily refer to application instructions in their decisions. Often the law is only a secondary reference, even though the application instructions of a municipality or joint municipal authority are not legally binding. The discretionary power in accordance with the application instructions should absolutely also include the consideration of the rights guaranteed by the Non-Discrimination Act and the Convention on the Rights of Persons with Disabilities, because following the application instructions must not lead to a conclusion that contradicts them.

The greatest challenge in the application instructions of the current Disability Services Act as well as the municipal disability services is that while the starting point of disability services should always be the individual need for services, the application instructions often require a rigid application. For instance, the application instructions

of several municipalities include instructions or rules on how a commute compensated as a transport service can only consist of a trip from home to a regular place of work and back. Such a rule is problematic in the context of disability services. A categorical rule without any possibility of adjustment does not take the different situations in life, requirements of working life or the combination of work and family life, for example, of persons with disabilities into account. The interpretation that one single method of arranging disability services should be compatible with the individual situation in life and disability of every person with a disability does not implement the principle of real and inclusive equality.

The decisions of the Administrative Court that were studied show that Administrative Courts do not systematically take the requirements of the Non-Discrimination Act or the UN Convention on the Rights of Persons with Disabilities (CRPD) into account when applying the Disability Services Act or Decree. Out of the fourteen decisions by an Administrative Court that were studied, in twelve the Administrative Court does not mention the Non-Discrimination Act or the CRPD at all in its grounds or the legal rules it applies. In the two decisions, in which the Non-Discrimination Act and/or the CRPD have been taken into account, the appellant had specifically referred to these sources of law. In none of the decisions studied did the Administrative Court apply the Non-Discrimination Act or the CRPD independently. In light of the study, there is a risk that the Disability Services Act and Decree are currently interpreted inadequately and too strictly at courts based on individual sections of the Disability Services Act, ignoring the other binding legislation that guarantees the equality of persons with disabilities.

### **Recommendation:**

In the reform of the legislation on disability services, the contents of the CRPD must be taken fully into account so that the regulations guarantee individual, needs-oriented services for persons with disabilities. Disability services must be able to genuinely support the real and inclusive equality of persons with disabilities in working life, for instance.

### **Rules on donating blood place male couples in an unequal position**

The equality of blood donation bans has been on the table for a long time in the Non-Discrimination Ombudsman's assessment of discrimination on the basis of sexual orientation in Finland. In the assessment of the Non-Discrimination Ombudsman, the current regulation by the Finnish Medicines Agency Fimea on the blood donation ban may violate the prohibition of discrimination based on sexual orientation in accordance with the Non-Discrimination Act.

According to Fimea's regulation on the safety of blood, sex with a partner in an established relationship does not result in a blood donation ban when the partners are of different genders. According to the regulation, however, sex with a partner in an established relationship does result in a blood donation ban if both partners are men. In the view of the Non-Discrimination Ombudsman, no other authority currently has a regulation that treats people so clearly unequally based on their sexual orientation.

According to the Non-Discrimination Act, different treatment in official activities based on sexual orientation, for example, can only be justified if it is based on legislation, the treatment has an acceptable objective and the measures to attain the objective are proportionate. Based on this, the authority would have to be able to prove that the safety of blood cannot be implemented by any lesser measures than by placing restrictions on men who live in an established relationship with a man. In the meetings or correspondence with the Non-Discrimination Ombudsman, Fimea has not shown that it would have scientific research information available on any risk that men who live in an established relationship with a man would pose to the safety of blood in Finland.

The Non-Discrimination Ombudsman finds that the regulation on donating blood should be changed so that it does not treat couples who have sex in an established relationship differently based on their sexual orientation. Fimea has informed the Non-Discrimination Ombudsman that it will start an investigation into the matter. The Non-Discrimination Ombudsman is considering bringing the matter to the National Non-Discrimination and Equality Tribunal for processing as a violation of the prohibition of discrimination.



**The regulation on donating blood should be changed so that it does not treat couples who have sex in an established relationship differently based on their sexual orientation.**

### **The practices of hospitals should take equality into account more comprehensively**

In recent years, the Non-Discrimination Ombudsman has received many complaints concerning practices in specialised medical care concerning both the accessibility of services as well as situations involving the denial of reasonable accommodations. The practices of hospitals may be based on a rigid assessment of patient safety or inadequate aids, which may cause humiliating or terrifying situations with regard to children or persons with disabilities in particular.

In the work of the Non-Discrimination Ombudsman, it has been discovered that the functional equality plan in accordance with section 5 of the Non-Discrimination Act was missing from every university hospital. Equality planning is a continuous service development process with the aim of equal treatment in the authority's operations, such as care and patient work. The obligation of the authorities to promote equality and draw up an equality plan is provided for by section 5 of the Non-Discrimination Act. According to the Ombudsman's knowledge, functional equality plans are finally being drawn up in all of the university hospitals.

The operation of specialised medical care is often treatment-specific and based on on-call duty in many respects. The activities are defined by the Act on the Status and Rights of Patients, which provides for the right to good healthcare and medical care and the related treatment. According to the Act, care must be arranged so that the patient's human dignity, conviction and privacy are respected. In addition, the patient's native language, culture and individual needs have to be taken into account as far as possible.

Among other things, the Non-Discrimination Ombudsman has investigated the treatment of a

child with disabilities during surgical treatment at a university hospital. The case concerned a school-age child with multiple disabilities who used alternative communication methods. The child communicated non-verbally, mainly through signs that could be interpreted by family members. In the operation on the child carried out during on-call hours, the child's mother was not allowed to be present during anaesthetisation or in the recovery room; the hospital referred to its general rules. In the case in question, following the rules led to a situation, in which the right of the child with disabilities to communicate and be understood during treatment despite the disabilities was not realised. The Non-Discrimination Ombudsman found that the presence of the patient's parent at the start of the operation and in the recovery room should have been implemented as a reasonable accommodation. The hospital had categorically refused to change its practices, and therefore an assumption of discrimination was established in the case. According to the expert statement received by the Ombudsman, the hospital's practices concerning child patients were not the only ones possible when assessed from the medical perspective; instead, the mother's presence could have been implemented safely. This would have made it possible to realise the reasonable accommodation in accordance with section 15 of the Non-Discrimination Act, which is an absolute obligation that also applies to hospitals.



**Taking the individual situation of patients into account is a key part of their equal treatment that respects their human dignity, which is also required by the Act on the Status and Rights of Patients.**

The Ombudsman expresses a concern of the insufficient readiness of healthcare operators, even the largest ones in our country, to promote equality with regard to different patient groups, especially patients with disabilities and members

of linguistic minorities. In other similar cases that have also come to the knowledge of the Ombudsman, the accommodation involved adapting the way the treatment was arranged, not the right to receive the treatment itself. Elsewhere, a situation has come to knowledge in which denying an accommodation from a person with a disability was suspected to have placed the realisation of the treatment at risk. In this case it was about cancer treatment.

It would appear that there are situations in specialised medical care, in which medicine and the realisation of equality are seen as being in conflict. Taking the individual situation of patients into account is a key part of their equal treatment that respects their human dignity, which is also required by the Act on the Status and Rights of Patients. In the view of the Non-Discrimination Ombudsman, it is good that hospital districts have now started equality planning.

#### **Recommendation:**

The treatment practices in specialised medical care should be assessed in the preparation of equality plans and service strategies of wellbeing services counties in order to ensure the realisation of equality. The treatment practices must enable reasonable accommodations for persons with disabilities when medical reasons do not pose absolute obstacles to them.

#### **1.2.5 An accessible society is equal for everyone**

The possibility to move, study, work, to attend to hobbies, travel and manage one's affairs is a part of everyday life. For this to be possible for everyone, there has to be a continued effort to promote accessibility in our society. The existing inaccessibility of the environment continues to be a substantial issue in Finland. The realisation of accessibility consists of various factors and requires binding legislation, understanding different needs and the will to make society functional for all. Accessibility, above all, is a matter of solutions that work for a broad group of people. Accessibility is a

central requirement for persons with disability to live independently and fully participate in all areas of life. Accessibility also widely benefits everyone.

In this section, accessibility is discussed from the perspectives of public transport and the European Accessibility Act. In addition, accessibility is addressed in the housing section of this report.

### **Accessibility must be used as the starting point in the design and implementation of public transport**

The accessibility and availability of public transport are key factors for the realisation of many fundamental rights. According to [a study on passenger transport by Traficcom](#), 10% of Finns have a mobility issue or restriction of some kind<sup>18</sup>.

In accordance with Article 9 of the UN Convention on the Rights of Persons with Disabilities (CRPD), the authorities are obliged to eliminate barriers to accessibility and promote the creation of accessible services in connection with both electronic services as well as transport.

The Non-Discrimination Ombudsman has proposed that Design for All should be established as the standard for public transport services. However, the challenge in setting a qualitative service level goal seems to be the lack of an overall picture of the market-based and publicly supported transport services offered. In that case, there is a risk that the equality impact assessment and the conclusions drawn from it are ineffective. The need for up-to-date and comprehensive information on accessibility is emphasised further as services that combine travel chains become more common. Linking transport as a disability service to travel chains should also be possible.

It is important to take the diverse needs of users into account in service design, and it must be ensured that digital services are genuinely accessible. Meanwhile, it must also be taken into account that even in the future, not all people will be able to use digital applications. For this reason, the authorities must ensure that in the future, the ability to use transport services equally will not depend on whether the passenger is able or knows how to use digital applications.



## **It is important to take the diverse needs of users into account in service design.**

### **The Non-Discrimination Ombudsman drew the attention to the accessibility of outsourced transport in the Pirkanmaa pilot project**

The Non-Discrimination Ombudsman drew attention to the accessibility of the commuter train pilot in the Tampere region. In the Pirkanmaa pilot, new commuter trains between Tampere and its neighbouring municipalities were added to the timetable in December 2019. These trains were a part of an agreement on outsourced transport between VR and the Ministry of Transport and Communications for 2020. In the Pirkanmaa pilot, VR operated mainly using the old rolling stock of Sm2 commuter trains, which are not accessible for passengers who use a wheelchair, among others. This means that due to the stock used in the pilot, some passengers cannot access these local traffic services.

According to section 22 of the Constitution of Finland, the public authorities must guarantee the observance of basic and human rights. This means that an authority has a lower threshold for being guilty of discrimination than a private company, if the authority starts a new service that people with disabilities cannot use due to its inaccessibility. In the view of the Ombudsman, not making special arrangements for those people with disabilities who cannot use the new service due to their disability is only permitted for the authority in exceptional cases.

The Non-Discrimination Ombudsman considered it extremely problematic for an authority not to require accessibility and availability from its public procurements. When planning procurements, the authorities must ensure that the product or service being acquired is also accessible and available to people with disabilities. If obtaining an accessible service was not possible despite appropriate and proportionate attempts, the authority would have to assess, for instance, the option of offering an alternative local transport service for those people who cannot use the planned local transport service due to its inaccessibility.



The Non-Discrimination Ombudsman found that objectives that are solely commercial or otherwise purely related to seeking profit are not an acceptable objective that a private service provider could use to justify the less favourable position of customers with disabilities due to deficiencies in accessibility.

In accordance with the recommendation of the Ombudsman, VR introduced an operating model for the transport link in the Pirkanmaa pilot, which enables passengers who use a wheelchair to travel in accessible long-distance trains at the price of the local transport ticket.

After the case involving the Pirkanmaa pilot, the Non-Discrimination Ombudsman initiated discussions with VR and the Ministry of Transport and Communications on the equality impacts of renewing the government's outsourcing agreement on passenger train traffic (2022–2030). Particular attention was paid to the connection between Kouvola and the Port of Kotka, which is not accessible with regard to both the transport equipment and the platforms. The Ministry of Transport and Communications is committed to working in cooperation with the Ombudsman to determine the possibilities of arranging an accessible replacement option for the connection in question as well as the appropriation required by the option.

VR is committed to replacing the inaccessible commuter train stock with accessible stock during the transport outsourcing agreement period of nine years. In addition, the ministry has started negotiations concerning accessibility changes to the platforms along the connection in question.

### **Recommendation:**

The concept of Design for All should be established as the goal of service standards in public transport.

### **The European Accessibility Act is an important tool on the way to an accessible society**

Promoting accessibility is necessary to make sure that everyone has an equal opportunity to participate in the society. In February 2022, the Non-Discrimination Ombudsman issued a statement on

the draft government proposal for legislation implementing the European Accessibility Act. Implementation of the European Accessibility Act is an important continuation of and complement to the requirements of the Act on the Provision of Digital Services.

The Ombudsman emphasises that the work will continue after the Directive has been promulgated, because the scope of application of the European Accessibility Act is not wide. Finland is committed to the continuous development of accessibility in accordance with the Convention on the Rights of Persons with Disabilities (CRPD). The accessibility of built environment must be ensured so that accessible products and services are available to people with disabilities in practice.

The Ombudsman draws special attention to the fact that even if the European Accessibility Act gave national leeway with regard to the built environment, there is no such leeway in the Non-Discrimination Act and CRPD. According to the decision practice of the National Non-Discrimination and Equality Tribunal, providing a service that is not accessible to people with disabilities can only be justified based on section 13 of the Non-Discrimination Act for an exceptional legitimate aim.

It is important to expand the emergency text message option to cover deaf people who speak a sign language, among others, so that advance registration will not be required for contacting an emergency response centre in the future. Video connections should be introduced as a legal requirement.

In the statement, the Ombudsman also emphasised that the equality impact assessment of the draft proposal must be supplemented and that sufficient resources must be ensured for monitoring the regulations.



**Promoting accessibility is necessary to make sure that everyone has an equal opportunity to participate in the society.**

## 1.3 Discrimination occurs in many aspects of life

All human beings are entitled to equal treatment, and discrimination is prohibited by many of our national laws, the Non-discrimination Act, the Criminal Code, as well as international human rights conventions. The statistics, reports and studies of the Non-Discrimination Ombudsman show, however, that discrimination is common in Finland, and it affects all aspects of life. Discrimination is still deeply embedded into the structures, practices and attitudes of Finnish society. It is also known that discrimination as a phenomenon is under-reported. Many people experience discrimination repeatedly, and reports show that many of them do not trust that reporting it would amount to anything, which is why discrimination is not reported to the authorities.

During the past four years, the most common grounds for discrimination of the complaints the Non-Discrimination Ombudsman has received have been disability and origin. Of the different aspects of life, complaints have most commonly concerned private services such as housing or commerce, working life, as well as social and health care services and other public services.

This section discusses the occurrence of discrimination in different aspects of life in Finland, especially with regard to the areas that have played a central role in the Ombudsman's work during the past four years. The section discusses discrimination in working life, housing, digitalisation, education and the lives of children and young people in more detail from the perspective of several different grounds for discrimination. In addition, the section discusses both risks related to the use of artificial intelligence and the need to place the promotion of equality at the heart of the use of AI. Discrimination in social and health care services has been discussed in section 1.2 of this report.

### 1.3.1 Inclusion of people with disabilities in working life must be systematically promoted

In Finland, people with disabilities experience discrimination in many areas of life. Most of the discrimination is due to the structures of the society and the prevailing attitudes. One key aspect of life

in which the equality of people with disabilities is not realised is working life.

The legislation on working life has been developed from the starting point of a person without disabilities, and disability is often equated incorrectly with illness or complete or partial inability to work. In Finland, people with disabilities have been referred to unemployment pension already straight after comprehensive school without actually assessing their ability to work.

There are many people with disabilities in Finland who are able to work, but have been excluded from working life against their will. They include experts who have qualified for a profession, highly trained professionals and motivated workers capable of carrying out many different kinds of duties. Even today, there is an assumption in the society that people with disabilities are excluded from working life. A fundamental change is needed here in order to achieve equality in working life.

The following sections discuss the structural barriers to the employment of people with disabilities and solutions to them. The Ombudsman gives recommendations for ensuring more effective realisation of the rights of people with disabilities and promoting their inclusion in working life.

### UN Convention on the Rights of Persons with Disabilities

The UN Convention on the Rights of Persons with Disabilities (CRPD) entered into force in Finland on 10 June 2016, and it constitutes directly applicable legislation in Finland. National legislation must be interpreted in accordance with and in the spirit of the Convention. Finland has made a commitment to ensure that the right to work of persons with disabilities is realised and promote said right.

Article 27 of the CRPD applies to the equal right to work and employment of persons with disabilities compared to others. This includes the right to the opportunity to gain a living by work that is freely chosen, and a work environment that is open, inclusive and accessible to persons with disabilities.

The Non-Discrimination Act and the CRPD provide for obligations to implement reasonable accommodations required by persons with disabilities. Implementing accommodations plays an important role in the employment of persons with

disabilities, both at the workplace as well as when implementing disability services, among other things. According to the Non-Discrimination Act, the obligation applies to the authorities, education providers and employers. The scope of application of the accommodation obligation in the CRPD is wider than that of the provision of the Non-Discrimination Act.

In the work of the Non-Discrimination Ombudsman, it has become clear that there is much room for improvement in the application of the CRPD. The authorities are not familiar with the Convention, and as a result, they do not apply it to a sufficient extent, either. In addition, the application instructions for disability services and the labour administration do not guide towards an interpretation of the law that would support fundamental rights and promote equality. The Ombudsman emphasises that if the legislation is not revised, the rights of the CRPD with regard to employment will not be realised.

### **Measures by the public authorities are required to change attitudes**

According to the UN Convention on the Rights of Persons with Disabilities (CRPD), people with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Disability is defined as an interaction between the individual and the environment, not based on the person's diagnosis. However, in the decisions by the authorities related to working life, receiving a service, benefit or reasonable accommodation may erroneously depend on whether a person has a specific diagnosis. Instead, the perspective should be how in the situation of each person with a disability, that person's opportunities of participating fully in the society could be supported, working life included.

The UN Convention on the Rights of Persons with Disabilities also obliges the public authorities to increase awareness of disability and the contribution of persons with disabilities to the society. The Non-Discrimination Ombudsman emphasises that this obligation must be taken seriously and that it must be implemented effectively and on a long-term basis. This makes it possible

to dismantle structural discrimination as well as harmful attitudes and prejudices, which in turn reduces the discrimination faced by people with disabilities in all aspects of life.

### **Disability does not mean inability to work**

The valid legislation, practices by authorities and general attitudes do not create the preconditions for the rights of people with disabilities with respect to working life in the manner required by the CRPD. A fundamental change in the way of thinking is needed, in which the person with a disability is seen as an active party instead of an object of care. Simply examining the legislation on work is not enough; instead, the key to change is a cross-administrative reform. Employment must be included as a key perspective in organising disability services, among other things.



### **The valid legislation, practices by authorities and general attitudes do not create the preconditions for the rights of people with disabilities with respect to working life in the manner required by the CRPD.**

The European Commission has published [a strategy for the rights of persons with disabilities 2021–2030](#)<sup>19</sup>. The key aim of the strategy is to implement the CRPD more effectively. Labour market policy that takes persons with disabilities into account is one of the key goals of the strategy. The Non-Discrimination Ombudsman finds that the measures recommended to the Member States by the Commission must be implemented in full so that it would be possible to realise the rights guaranteed by the CRPD in practice.

In 2020, the Ministry of Economic Affairs and Employment published a report on the structural barriers to employment of persons with disabilities<sup>20</sup>. The work on the report was a result of an initiative submitted by the Non-Discrimination Ombudsman to the Ministry. The report reveals several structural problems related to equality



in working life that the legislator should address without delay. Problems in disability services, the support and service systems and accessibility are described in the report. The work continuing based on the report at the Ministry of Economic Affairs and Employment (Roadmap for removing barriers to employment of persons with disabilities) has been delayed. The Non-Discrimination Ombudsman stresses that the roadmap should be completed as soon as possible. Sufficient resources must be allocated for implementing the roadmap, and cross-administrative cooperation to ensure the effectiveness of measures must be ensured.



**A fundamental change in the way of thinking is needed, in which the person with a disability is seen as an active party instead of an object of care.**

**Lack of statistics and research information are an obstacle in the way of effectively promoting the inclusion of persons with disabilities in working life**

Equality impact assessments play a key role in ensuring the realisation of fundamental and human rights of persons with disabilities when reforming the legislation. The Non-Discrimination Ombudsman has issued several notices on deficiencies in impact assessments with regard to the effects related specifically to disability in legislative proposals. The lack of statistics on persons with disabilities is also linked to the impact assessment.

There is not enough statistical data on the inclusion of persons with disabilities in working life to support decision-making. In the autumn of 2021, the Non-Discrimination Ombudsman submitted an initiative to the Finnish Institute for Health and Welfare and the Ministry of Social Affairs and Health on correcting the deficiencies in research information on the rights of persons with disabilities regarding working life.

Without sufficient information, it is impossible to implement effective measures to improve the employment of persons with disabilities or assess how the rights required by the CRPD are realised in Finland. The CRPD requires Finland to compile and maintain appropriate statistics and research information related to disability. In the view of the Ombudsman, the current state of affairs does not meet the obligations imposed on Finland.

**Recommendations:**

- In structural reforms and otherwise significant projects, special attention must be paid to assessing the impact on persons with disabilities. The lack of statistics and research information on the inclusion of persons with disabilities in working life make it more difficult to make decisions based on information as well as conduct the equality impact assessment of activities by the authorities.
- The legislator and the authorities should take advantage of positive action so that the rights of persons with disabilities in working life would be realised equally.
- A roadmap for dismantling structural obstacles preventing the employment of persons with disabilities must be drawn up without delay under the direction of the Ministry of Economic Affairs and Employment. Sufficient resources must be allocated to the implementation of the roadmap and cross-sector administrative cooperation must be ensured in order to guarantee the effectiveness of measures.

### **The legal protection of persons with disabilities who have experienced work discrimination in working life must be ensured**

It seems that the discrimination in working life experienced by persons with disabilities only rarely comes to the knowledge of the competent authority, meaning the occupational safety and health authorities of the Regional State Administrative Agencies. Annually, disability is found as grounds for discrimination in 2–4 monitoring requests submitted to occupational safety and health authorities concerning discrimination in working life.

discrimination in working life experienced by persons with disabilities seems nevertheless to be common. According to the fundamental right barometer published by the Ministry of Justice in 2021, 39% of persons with disabilities have reported experiencing discrimination at work or while looking for a job during the past five years<sup>21</sup>. Out of the persons with disabilities who had experienced discrimination, 88% did not report the most recently experienced discrimination at work or while looking for a job. Typically the reason for not reporting the issue was the idea that reporting it would not have any effect. Distrust in the functioning of the system and fear of retaliation, such as the loss of a job, also seemed to have an influence.

For years, disability and origin have been the most frequent grounds for discrimination in the complaints submitted to the Non-Discrimination Ombudsman. Nevertheless, the Non-Discrimination Ombudsman does not have authority to investigate discrimination related to working life.

Statistics show that most of the discrimination in working life experienced by persons with disabilities remains hidden, and it is difficult to address based on the current regulations. Work discrimination offences, in which disability constitutes the grounds for discrimination are very rare; additionally, the number of decisions to waive charges and discontinue the pre-trial investigation is relatively high. This indicates that disability as grounds for discrimination is not identified well enough by the police or the National Prosecution Authority, either.

The ability of victims of discrimination in working life to exercise their rights must be strengthened. The legal protection of victims of discrimination must be realised better than it is at the

moment. The awareness of the authorities, such as the police and the prosecutors, of the discrimination faced by minorities in a vulnerable position must be increased systematically and in a goal-oriented manner.

### **Entrepreneurs with disabilities and preconditions for entrepreneurship**

Persons with disabilities must have an equal opportunity to become entrepreneurs. For this to become reality, entrepreneurs with disabilities should be compensated for the costs of disability, especially at the stage of establishing the company. These costs are ones that entrepreneurs without disabilities do not have. Persons with disabilities may sometimes have to purchase accessible equipment or equipment with accessible additional features; they are often more expensive than ordinary ones. Such costs place entrepreneurs with disabilities in a less favourable position compared to entrepreneurs without disabilities in a competitive situation.

There are differences between municipalities in granting disability services for new entrepreneurs. Some municipalities may require the entrepreneurs with disabilities to be able to withdraw earned income from their company immediately in order to grant them transport services or personal assistance for the entrepreneurship. This is impossible for many new entrepreneurs. An entrepreneur with a disability may need transport services and personal assistance to be able to start up their business activities and withdraw earned income. In reality, the municipal application practice of the Act on Disability Services and Assistance may prevent a person with a disability from becoming an entrepreneur.

The Non-Discrimination Ombudsman has discovered two problems related to official instructions and the interpretation of law. The first problem is related to the start-up grant for new entrepreneurs and a pension paid based on an injury in accordance with section 12(4) of the National Pensions Act. The requirement for granting a disability pension is not inability to work; instead, the pension is paid based on permanent blindness or inability to move, regardless of the person's ability to work. Those who receive this pension receive it in full, regardless of their earned income.

In contrast, the KEHA Centre (Development and Administration Centre for the ELY Centres and TE Offices) interprets the valid legislation so that the pension in accordance with section 12(4) of the National Pensions Act is deducted from the start-up grant for new entrepreneurs without individual consideration that would take account of the costs incurred due to disability with regard to the entrepreneurship, for instance. Due to the interpretation practice of the KEHA Centre, there may not be any start-up grants at all left to be paid to the person with a disability who is establishing a company.

The second problem involves the criteria for the start-up grant for self-employment granted by the Social Insurance Institution of Finland (Kela). The grant is intended to fund the cost of starting a business or switching to a new line of business due to the limitations in activities of entrepreneurs with disabilities as well as personal tools for up to EUR 17,000, while the own risk is always at least 20%. If the person with a disability is a shareholder in a company that has other shareholders, granting a start-up grant for self-employment requires that the shareholder with a disability owns at least 51% of the company. The criteria are based on instructions by Kela, and in practice, they mean that a start-up grant for self-employment is only granted if the person with a disability is a sole entrepreneur. Noticeably few start-up grants for self-employment have been granted in recent years. Since 2015, a maximum of 19 people per year and a minimum of four people per year have received the support.



**Persons with disabilities must have an equal opportunity to become entrepreneurs.**

### **Recommendations:**

- The authorities must ensure that persons with disabilities have an equal opportunity to establish a company.
- The practices and organisation methods of municipal disability services must be flexible so that entrepreneurship and work are possible for persons with disabilities in reality.
- The support and benefits granted to entrepreneurs must also be available for applicants with disabilities in practice. The equality impact of instructions and practices by the authorities must be assessed, and it must be ensured that the practices on granting support follow an interpretation of the law that supports fundamental and human rights.

### **Changes needed in the disability pension**

The public authorities must systematically and in a goal-oriented manner aim to remove structural obstacles, such as welfare traps, that make the inclusion of persons with disabilities in working life more difficult from the regulation of disability pensions. One concrete option would be to develop a model for persons with disabilities as positive action, separate from the regulations on inability to work. The model should integrate the features of disability pensions in accordance with section 12(2) and 12(4) of the National Pensions Act to ensure the best realisation of fundamental and human rights.

### **Recommendation:**

- Legislation on pensions and the operating models of employment services must be reformed so that they support disabled persons' participation in the working life with no risk of loss of income.

### 1.3.2 Education to strengthen equality

There is a widespread consensus in the Finnish society on the importance of teaching and education as a basis for the good and safe growth of children and young people in addition to home and family. This important purpose of education has also been recognised by the Non-Discrimination Act, which obliges education providers to promote equality and draw up an equality plan.

The experiences of members of minorities on education and training – based both on research and reports as well as complaints received by the Non-Discrimination Ombudsman – nevertheless describe prejudice, being an outsider, bullying and disparagement encountered already in early childhood. It is crucial that discrimination as a structural phenomenon in education is identified and operating methods that strengthen equality are developed. Good governance, a strong knowledge base, development work based on research and best practices, good equality planning and suitable content in continuing education support these methods.

#### **Antiracist work in education and training**

The report on discrimination experienced by people with an African background published by the Non-Discrimination Ombudsman in 2020 showed that racism occurs at all levels of education, starting already in early childhood education and care<sup>22</sup>. Racist harassment and racialising practices in guidance counselling in particular came up in the experiences of those who responded to the survey or were interviewed for the report. Racist harassment that was not sufficiently addressed by educational institutions are also highlighted in the complaints received by the Non-Discrimination Ombudsman.

In order to promote the realisation of the equality of children, the Non-Discrimination Ombudsman finds that the obligation concerning equality planning should be extended to cover the education system as a whole, including early childhood education and care. This would mean that like educational institutions and providers of education, an obligation to promote equality and draw up an equality plan would also be imposed on early childhood education and care providers.

In addition to functional equality plans of high quality, anti-racist and anti-discrimination education is needed in early childhood education and educational institutions, because educational institutions and education providers are responsible for establishing a safe learning environment. Anti-racist and anti-discrimination education should be included as a part of the degree programmes and continuing education of teachers.

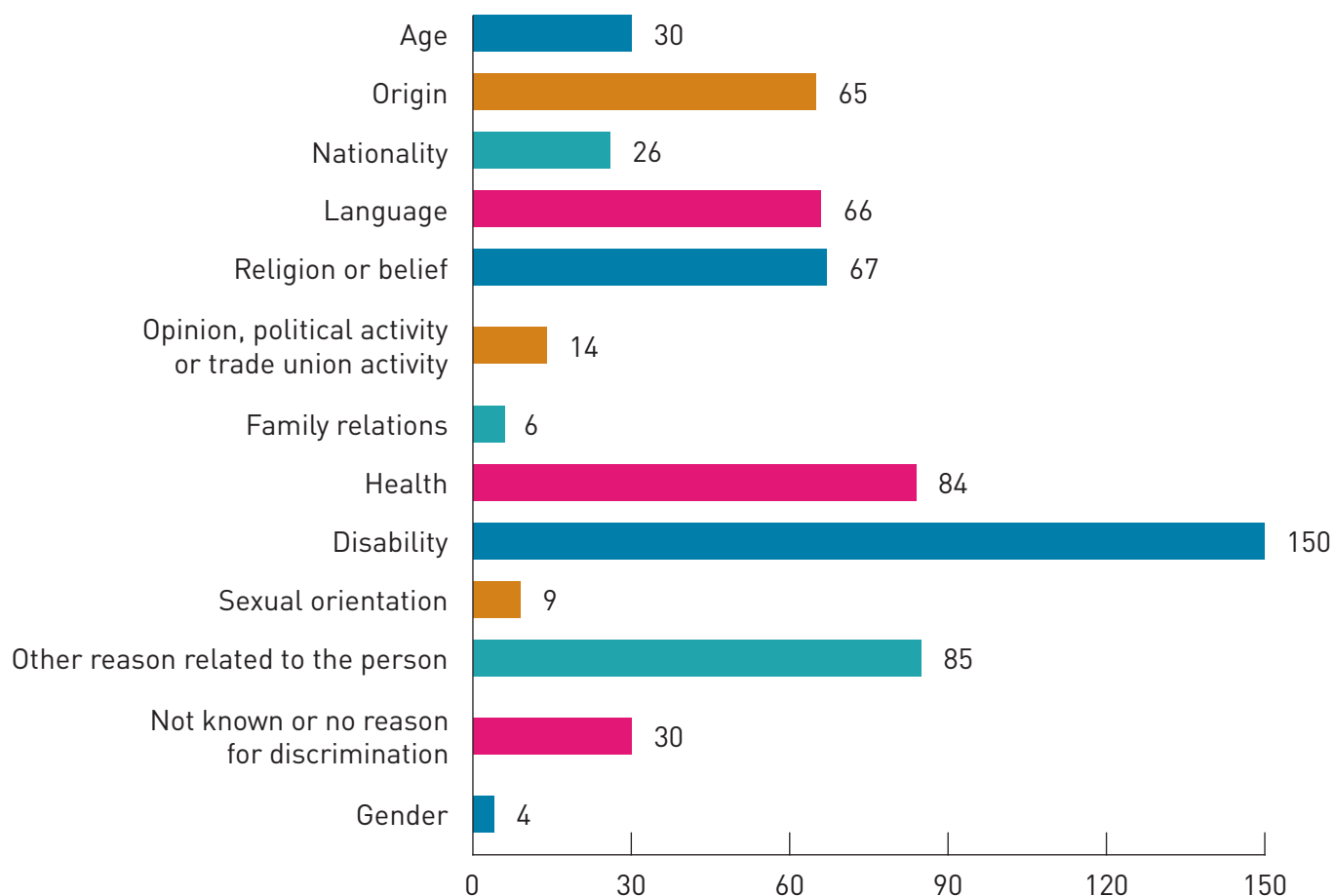
Racism and discrimination must be addressed actively in education. In the view of the Non-Discrimination Ombudsman, the prohibition of harassment in the Non-Discrimination Act must be used more effectively as a way of addressing racist harassment. The obligation of educational institutions to address harassment should be strengthened in connection with the partial reform of the Non-Discrimination Act. At the moment, an employer's actions are considered discrimination if the employer does not take sufficient measures to remove the harassment of an employee after becoming aware of the harassment. A similar obligation to take measures should be expanded in educational institutions to apply to addressing the harassment of pupils and students in addition to the staff.



**Antiracist and anti-discrimination education should be included as a part of the degree programmes and continuing education of teachers.**

The Ombudsman finds that educational institutions must have clear processes and contact persons for addressing racist harassment and discrimination. The processes must be easily and reliably available to the children and young people. The obligation to address issues does not apply only to racist harassment, it covers all grounds for discrimination. Behaviour that creates an atmosphere that is threatening or demeans human dignity based on sexual orientation or disability, for example, must be addressed actively and forcefully.

## Contacts concerning discrimination in education according to grounds for discrimination 2018–2021



The distribution of grounds for discrimination of the received contacts concerning discrimination in education was in 2018–2021 as follows: age 30, origin 65, nationality 26, language 66, religion or belief 67, opinion, political activity or trade union activity 14, family relations 6, health 84, disability 150, sexual orientation 9, other reason related to the person 85, not known or no grounds for discrimination 30 and gender 4.

Awareness and dismantling of racialising ways of thinking in guidance counselling and guidance towards the S2 subject is important for the realisation of equality in education. Identifying and recognising these discriminatory structural practices is necessary so that they can be dismantled, because they may be playing a significant role in the divergence of future education, life paths and social status.

After the publication of the report on experiences of discrimination of persons with an African background, several non-governmental organisations, universities and authorities have taken measures recommended in the report. The field of organisations has already provided instructions on how to address racist harassment, and training in anti-racist guidance counselling has been

strengthened in the universities. The Office of the Non-Discrimination Ombudsman also organises anti-racist training and produces materials for educational institutions within the framework of the EU-funded Capable project (2021–2023)<sup>23</sup>.



**Identifying and recognising discriminatory structural practices in education is necessary so that they can be dismantled.**

## **Reasonable accommodations ensure the equality of people with disabilities in education**

In 2018–2021, disability was the ground for discrimination in 23% of the complaints concerning education submitted to the Non-Discrimination Ombudsman. Most of these were about the realisation of reasonable accommodations in education. Among the requests for a statement from courts of law in accordance with section 27 of the Non-Discrimination Act, too, complaints concerning reasonable accommodations are strongly represented. Legal practice to serve as guidance has also been received on the topic in recent years.

The yearbook decision issued by the Supreme Administrative Court in May 2020 provides a significant policy statement concerning the relationship between the Non-Discrimination Act and the Basic Education Act<sup>24</sup>. The case involved the possibility of a child with disabilities to continue going to the original school after the family had moved into the school admission area of another school. According to the rules of the municipality, the child had the right to continue going to the old school, but in that case, the municipality would not arrange school transport for the child. The child in question needed school transport due to a disability. In accordance with section 32 of the Basic Education Act, the municipality can oblige custodians to be responsible for school transport, if the child is accepted into a school other than the closest school specified by the municipality. According to the Supreme Administrative Court, the wording of the Act in itself is very clear and the actions of the municipality were in accordance with the Basic Education Act.

The Non-Discrimination Act nevertheless obliges the municipality and other education providers to make reasonable accommodations that enable people with disabilities to receive education equally with others. School transport was necessary for the child, and refusing transport reduced the child's opportunity to enjoy the equal right to continue going to the old school after the family had moved. The costs of the transport could not be considered unreasonable, either, because the trip from the family's home to the child's old school was practically the same as the trip to the closest school. As a result, the Supreme Administrative Court ordered that the child should be granted

free transport as a reasonable accommodation in accordance with section 15 of the Non-Discrimination Act.

The yearbook decision of the Supreme Administrative Court strengthened the previous policy of the Non-Discrimination Ombudsman on the role of school transport in ensuring equal education opportunities. In its decision, the Supreme Administrative Court also relied on the statement issued by the Non-Discrimination Ombudsman in the case. The decision confirmed that when a restrictive interpretation of the wording of the Basic Education Act leads to a discriminatory end result, the instructions, practices and decisions must primarily follow the Non-Discrimination Act.



**Instructions that are based on the Basic Education Act alone are not always sufficient for ensuring the equal opportunities of all students to receive education.**

The Non-Discrimination Ombudsman emphasises that municipalities should assess school admission, school transports and other rules guiding the education from the perspective of the Non-Discrimination Act. When reviewing the practices, attention should be paid, among other things, to whether indirectly discriminatory elements have remained in the instructions and how they have taken account of the obligation of the municipality to make reasonable accommodations to ensure the equality of people with disabilities. Instructions that are based on the Basic Education Act alone are not always sufficient for ensuring the equal opportunities of all students to receive education.

The yearbook decision of the Supreme Administrative Court is a significant policy statement. Legally valid interpretations of the many issues related to the content of the accommodation obligation are still needed, however. Should free school transport be offered from both addresses of dual residence for those children who need



transport due to their disabilities? To what extent does the accommodation obligation apply to learning objectives in addition to the ways of completing the studies at different levels of education? The Ombudsman emphasises that education paths should also be open to people with disabilities. In fact, education providers and educational institutions should ensure through reasonable accommodations that the right to education is not at risk because of unnecessary obstacles.

### **The coronavirus pandemic brought up many equality issues in education**

For the past two years, education has been forced to react to the exceptional situation due to the coronavirus pandemic in many ways. Arrangements have been made in situations that could not have been anticipated when drawing up the legislation, instructions and practices concerning education. Extensive distance learning at different levels of education and other exceptional educational arrangements have also created new problems in the realisation of equality. The Non-Discrimination Ombudsman has received several complaints that have brought up discriminatory features in instructions for the time of coronavirus.

When comprehensive schools returned to classroom education after the first distance learning period in May 2020, the Non-Discrimination Ombudsman received a complaint concerning an issue related to people whose family included members of high-risk groups with regard to the coronavirus in the instructions of the Finnish National Agency for Education. Pupils in a high-risk group with regard to the coronavirus received instructions on special teaching arrangements, which in practice often meant distance learning. According to the Basic Education Act, such arrangements can only be made based on the pupil's own state of health. The Finnish National Agency for Education recommended that children whose family included members of high-risk groups should also stop participating in classroom education. However, offering them distance learning was not possible based on the Basic Education Act.

The Non-Discrimination Ombudsman drew the attention of the Finnish National Agency for Education to the application of the Basic Education Act while taking the Non-Discrimination Act into

account. The instructions placed children with members of high-risk groups in their family in an unfavourable position in relation to those children who were members of a high-risk group themselves. The Finnish National Agency for Education changed its instructions based on the statement of the Non-Discrimination Ombudsman. The quick reaction in an exceptional situation should also be noted in the case. The time from the complaint received by the Non-Discrimination Ombudsman to the publication of the amended instructions by the Finnish National Agency for Education was less than a week in total.

The Non-Discrimination Ombudsman also issued a statement on the temporary changes to the Basic Education Act. In the assessment of the Non-Discrimination Ombudsman, reforms that enable distance learning more extensively have not been discriminatory in principle, even though they placed pupils and students in different positions based on factors such as age and disability, because the aim of the arrangements was to safeguard the education of those in a vulnerable position and the methods for reaching this aim were proportionate. As the pandemic continued, the effects of special arrangements that increased inequality intensified. As a result, the Non-Discrimination Ombudsman's attitude towards the temporary change of the Basic Education Act in the spring of 2021 was more critical than before. The cumulative effects of coronavirus restrictions were unreasonably heavy when applied to children and young people. Measures to control the pandemic should be targeted more strongly at places other than schools.

The Non-Discrimination Ombudsman emphasises that even in exceptional conditions, the impact assessment of measures should be done carefully and in such a way that the risk of discrimination and the effects of restrictive measures from the perspective of equality would be weighed carefully. The Non-Discrimination Ombudsman finds that strong restrictive measures, such as the extensively implemented distance learning and restrictions in hobby activities in 2020–2021, have placed great stress on the wellbeing of children and young people in particular. It can even be considered that children and young people have experienced indirect discrimination due to their age,

because the operation of restaurants licensed to serve alcohol has been possible in many areas at the same time.

In order to ensure the wellbeing of children and young people equally in the time after the pandemic, special attention must be paid to individual support, guidance and student counselling, as well as services provided to children and young people with a low threshold, mental health services in particular.

### **Equality of religion and ethics**

According to the Basic Education Act, the municipality must provide religious education in accordance with the majority religion of the municipality; in practice, this means either the Evangelical Lutheran Church of Finland or the Orthodox Church of Finland. The municipality must also provide education in accordance with the other church if there are at least three pupils. For those belonging to other religious communities, the municipality must provide education if there are at least three pupils and their custodians request it. Those who do not belong to any religious community are taught ethics, and lessons are provided if the custodians of at least three pupils request it. Originally, this basic arrangement was strongly supported by the legislator, and there is a possibility to receive special funding for the teaching of religion and ethics in small groups. This option has been considered important for the representatives of minority religions.

However, the teaching of religion and ethics is problematic when considering the realisation of the equality of pupils. In the current situation, those who are members of the same religious community as the majority of pupils, and pupils for whom education in their own religion is provided, cannot choose ethics, while those who are not members of a religious community or are members of minority religions can study religion, if they wish. No acceptable grounds from the perspective of fundamental rights have been presented for such a difference in possible choices. An equal freedom of choice could be implemented without extensive changes to the education of teachers or the education system.

There are also several problems related to the practical arrangements of teaching religion and

ethics separately. Pupils who do not study the same religion as the majority of other pupils in particular are often placed in an unfavourable position. Due to small group sizes, lessons may be centralised at a specific school in the municipality. There may be issues in arranging transport between the pupil's own school and the school that offers education in religion or ethics. When pupils are divided into classes, taking optional subjects, weighted education or wishes to stay with friends into account creates a difficult puzzle that may sometimes lead to additional compromises. The availability of teachers is also a challenge in many areas in education in minority religions.

During the current term of government, the Ministry of Education and Culture is investigating a reform of religion and ethics as subjects. One of the options is general education in religion and ethics, common to all pupils, which would give pupils a picture of the historical, cultural and social importance of different religions. However, when assessing the reform, the right of members of minority religions to receive information about their own religion and support in preserving their own cultural heritage must also be taken into account. The Non-Discrimination Ombudsman monitors the work on the reform of education in religion and ethics.



### **Recommendations:**

- The obligation on equality planning should be extended to cover the whole teaching and education system. In the partial reform of the Non-Discrimination Act, the obligation must also be extended to apply to early childhood education and care.
- In the partial reform of the Non-Discrimination Act, the obligation of educational institutions to address the harassment of pupils and students must be strengthened. The ability of educational institutions to address harassment must be reinforced through instructions and training.
- Instructions on reasonable accommodations in education must be drawn up for all levels of education. In addition to learning situations and evaluation, the instructions must also cover accommodation obligations related to the selection of students, transport and the administration of education.
- The effects of the coronavirus pandemic on children and young people must be monitored carefully, and the resources and availability of student welfare services and mental health resources in particular must be ensured.
- In the education on religion and ethics, all pupils must be given a choice, so that those pupils who are members of a religious community can also select ethics as a subject.

### **1.3.3 Discrimination in housing**

Roughly 10% of the complaints submitted annually to the Non-Discrimination Ombudsman involve housing discrimination. The complaints involve, for instance, experiences of discrimination in receiving housing or the choice of residents, lack of accessibility in housing or the arrangement of temporary housing. In addition, complaints also

involve harassment situations in the neighbourhood and situations, in which tenancy has been terminated based on discriminatory grounds. The Roma people and people with a foreign background in particular contact the Ombudsman in housing-related matters. In addition, more and more complaints are received from people with disabilities concerning deficiencies in the accessibility of housing or the realisation of reasonable accommodations.

#### **Accessibility is a key part of housing equality**

The Non-Discrimination Ombudsman has received several complaints related to serious deficiencies in the accessibility of housing. Especially people with disabilities and older people have submitted complaints in addition to those moving with a pram, rollator or other assistive equipment as well as people with temporarily reduced mobility. The complaints have typically been related to obstacles against entry and mobility, arrangements during lift renovations as well as the storage and charging of assistive equipment. In the worst case, the actions of housing companies, or lack thereof, may lead to people being trapped in their homes.



#### **Storing and charging assistive equipment for people with disabilities should be permitted in the common areas of a housing company as a rule.**

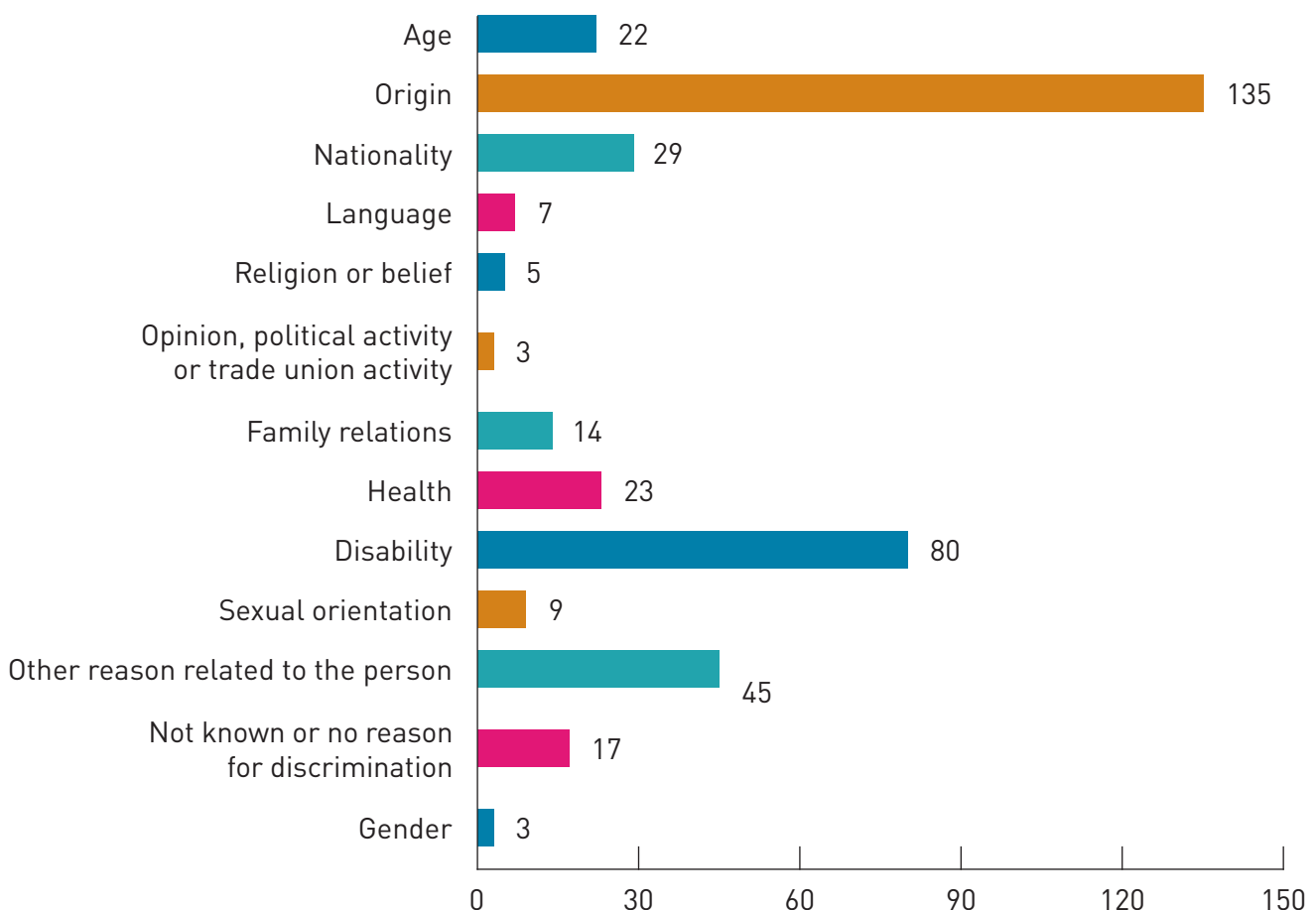
For housing companies accessibility means, for instance, accessible entry to and exit from the apartment, storage of assistive equipment in the common areas of the housing company, as well as disabled parking spaces for vehicles that have a parking card for people with reduced mobility. The Non-Discrimination Ombudsman finds that storing and charging assistive equipment for people with disabilities should be permitted in the common areas of a housing company as a rule. Based on a case-by-case assessment, prohibiting the storage and charging of an electric moped, electric wheelchair or other assistive equipment

in the shared storage spaces or bicycle storage of the housing company can be considered indirect discrimination. In addition, in individual cases the refusal to approve a storage request may constitute denial of a reasonable accommodation, which is also discrimination prohibited by the Non-Discrimination Act. It is important to ensure that the parties taking care of maintenance and building management are also aware of the rights of people with disabilities as well as accessible and non-discriminatory operating methods.

In 2021, the National Non-Discrimination and Equality Tribunal has made two important decisions related to the obligations of housing companies. In one of the cases, the Tribunal found that

the housing company was guilty of discrimination when the company did not grant a permit for a ramp and an electronic door opening system at the front door of the building<sup>25</sup>. In the other decision, the Tribunal considered the housing company to be a service provider in accordance with section 15 of the Non-Discrimination Act, which means that it was obliged to implement reasonable accommodations, basing its view on an interpretation of the law that favours fundamental and human rights<sup>26</sup>. As grounds for its policy, the Tribunal also referred to the definition of reasonable accommodations of the UN Convention on the Rights of Persons with Disabilities and the Article concerning accessibility.

### Contacts concerning discrimination in housing according to grounds for discrimination 2018–2021



The distribution of the discrimination grounds of the received contacts concerning discrimination in education was in 2018–2021 as follows: age 22, origin 135, nationality 29, language 7, religion or belief 5, opinion, political activity or trade union activity 3, family relations 14, health 23, disability 80 pcs, sexual orientation 9, other reason related to the person 45, not known or no grounds for discrimination 17 and gender 3.

## **Ensuring accessibility should also be included in the Limited Liability Housing Companies Act**

Even though housing companies are already bound by the obligation to promote accessibility as described above, ensuring accessibility should also be included in the Limited Liability Housing Companies Act. The UN Convention on the Rights of Persons with Disabilities (CRPD) has been ratified in Finland on the legislative level by a decision of the Parliament. The CRPD includes regulations on accessibility (Article 9) as well as living independently and being included in the community (Article 19). The CRPD also contains the principle of universal design and obliges states to implement all appropriate measures to promote equality and remove discrimination so that the implementation of reasonable accommodations for persons with disabilities is ensured.

The Non-Discrimination Ombudsman has made an assessment and issued a statement regarding the amendment of the Limited Liability Housing Companies Act in progress. The Ombudsman considers it necessary to record the obligations of the Limited Liability Housing Companies Act concerning accessibility so that they are clearly visible. The Limited Liability Housing Companies Act should take account of the rights and equality of people with permanently or temporarily reduced mobility or other mobility issues, as well as the responsibilities of the housing company with regard to implementing equality so that the housing company has, among other things, a clear obligation to assess accessibility and realise requests by the shareholders concerning reasonable accommodations. As regards public to spaces, the starting point should be their accessibility for people with different types of reduced mobility, unless the requested changes would cause unreasonable inconvenience or unreasonable costs for the company.

The Ministry of Justice has stated that the aim is to issue the Government proposal in the autumn of 2022. The Non-Discrimination Ombudsman is concerned because at the moment, a consensus only exists on that shareholders would have the right to implement changes improving accessibility outside their own flat at their own cost or with government support, for example. The Non-Discrimination Ombudsman also considers it impor-

tant to include an obligation of the housing company to assign common areas for the vehicles of people with reduced mobility, and take the needs of people with reduced mobility into account in the company's renovations and changes in the Limited Liability Housing Companies Act.

### **Recommendation:**

The reform of the Limited Liability Housing Companies Act must ensure equality and accessibility in accordance with the obligations set out in the UN's Convention on the Rights of Persons with Disabilities, which is binding on Finland.

## **The role of the rescue authorities in the accessibility of housing companies**

The interpretation of whether assistive equipment can be stored in the common areas of housing companies varies between different rescue departments.

In one complaint submitted to the Ombudsman, the housing company did not grant permission for installing a ramp at the front door; as a result, it would have been impossible for the resident to rescue themselves from the building in case of an emergency. The rescue authority did not address the issue, even though the authority was made aware of it. In the rescue authority's interpretation of the Rescue Act, because people with disabilities were not specifically mentioned in the Rescue Act, it was challenging for the rescue authority to address deficiencies in rescue arrangements in connection with an individual housing company. In the case in question, the rescue authority did not interpret the issue from the perspective of the Non-Discrimination Act at all to enable an equal opportunity for the resident to rescue themselves. The Non-Discrimination Ombudsman brought the matter to the National Non-Discrimination and Equality Tribunal.

The scope of application of the Non-Discrimination Act is general, and it is applied in parallel with other legislation. The rescue authority is an authority that exercises public authority and is obliged to safeguard fundamental and human

rights. The rescue department is under an obligation to promote equality and comply with the prohibition of discrimination in accordance with the Non-Discrimination Act. The rescue department must aim to ensure in advance that these obligations can be realised. The rescue department must aim to interpret the Rescue Act in a way that favours fundamental and human rights so that equality is realised in practice. In order to safeguard fundamental and human rights, the authority must also be prepared to utilise positive action in accordance with section 9 of the Non-Discrimination Act, if it is not possible to guarantee the realisation of equality by other means.

### **Recommendation:**

In the emergency services, equality must be promoted systematically and comprehensively. The obligation to assess and promote the fulfilment of equality in emergency services must be taken into account in the strategies and equality plans of the wellbeing services counties.

### **A lessor carrying out public administration duties has an obligation to promote equality**

The Ombudsman regularly receives complaints, in which rental housing companies owned by municipalities or private rental housing companies carrying out public administration duties do not seem to implement the right to equal and non-discriminatory housing. The rental housing companies do not always understand the responsibilities resulting from public administrative duties or are not aware of them, especially the obligation to take further measures concerning the customer under the obligation of promote equality. The complaints have been related to issues such as the use of different languages in handling matters with the housing company, obligation to make reasonable accommodations for those applying for tenancy or tenants with disabilities, or other special needs that ensure the mobility of the person with a disability during renovations, for instance. In such situations, there is a risk that the rights of persons who are at a disadvantage are not realised, and

the tenants themselves must make an unreasonable effort to ensure the realisation of equality.

Non-governmental organisations, such as municipal housing companies established as limited liability companies and other private rental housing companies, are considered to be carrying out public administration duties when they open applications for state-supported rental flats to the public and when selecting tenants for such flats. In this regard, the parties are comparable to authorities, and they have an obligation to promote equality in accordance with the Non-Discrimination Act. An operator with an obligation to promote equality may be required to take more extensive measures to implement reasonable accommodations than a privately owned company, for example. The prohibition of discrimination in the Non-Discrimination Act and the obligation to make reasonable accommodations, however, apply to the activities of all housing companies and lessors.

### **Recommendations:**

- Lessors who rent out ARA housing must, according to the Non-Discrimination Act, promote non-discrimination in a target-oriented manner in their duties that are deemed to be public administrative duties.
- The Housing Finance and Development Center ARA and the Ministry of the Environment must provide lessors of residential apartments with information and instructions on non-discrimination. In any limited liability companies that they own, municipalities must in their own activities and through the means of ownership steering ensure that the promotion of non-discrimination is implemented in housing.



## Housing consultation

The realisation of the rights of people at risk of discrimination in housing can be promoted via housing consultation. Concerning the final report of the working group that was preparing the inclusion of housing consultation in legislation, the Non-Discrimination Ombudsman stated that housing consultation should be provided for by law. The Ombudsman emphasises that in the further work, the obligations imposed by the Non-Discrimination Act must be taken into account, especially with regard to the methods of arranging the consultation and its content.

Equality should be taken into account in housing consultation so that reasonable accommodations would be made on the individual level and positive action implemented, if necessary. For instance, in situations involving changing housing, the special needs for accessible housing related to the tenant's disability or state of health or the schedule of the change of housing should already be taken into account at an early stage.

Following the principles of good governance is a part of the activities of the authorities. In housing consultation, this means things like compliance with the obligations of the Language Act and the Administrative Procedure Act and, with regard to the obligation to promote equality in accordance with the Non-Discrimination Act, multilingual consultation whenever possible, taking the needs of the customers into account. For housing consultation, it also means providing sufficient information, giving the customer comprehensive support and actively providing information.

### Recommendation:

Housing consultation provisions must be introduced in legislation. Legislation that takes into account the special needs of various groups must ensure counselling especially for individuals who are at risk of social exclusion or homelessness and it must ensure access to counselling.

## The lessor discriminated against a same-sex couple – the Ombudsman promoted a settlement

In recent years, the Non-Discrimination Ombudsman has handled several cases, in which an apartment has not been rented to a same-sex couple due to their sexual orientation. The discrimination of sexual minorities is largely under-reported, and not everyone reports the discrimination they experience. In fact, it is likely that discrimination occurs more often than it is reported.

The Non-Discrimination Ombudsman promoted a settlement in a case, in which a private lessor discriminated against a same-sex couple when renting an apartment based on their sexual orientation<sup>27</sup>. In the communications between the lessor and the couple that applied for the apartment, the lessor also infringed the human dignity of the couple in a manner that meets the definition of harassment prohibited by the Non-Discrimination Act. The lessor paid EUR 1,000 for each applicant as compensation for the discrimination.



### **The discrimination faced by the Roma people in the housing market affects their entire life**

The discrimination faced by the Roma people is a serious human rights issue in Finland. In the recent years, most of the complaints filed by the Roma people to the Ombudsman have concerned housing. A positive development is that discrimination related to housing in particular has been increasingly often addressed by means of criminal law in recent years.

The District Court of Lapland imposed a sentence (R 20/752) for discrimination on a lessor in a case, in which the lessor refused to rent an apartment to a Roma applicant due to the applicant's ethnic origin. The Court also stated that the lessor's grounds for refusal were not acceptable in any way. The Non-Discrimination Ombudsman issued a statement to the District Court in the case, in which the Ombudsman found that there is clear reason to suspect discrimination on grounds of ethnic origin in violation of the Non-Discrimination Act in the case.

In 2019, the District Court of South Karelia imposed a sentence (R 19/1279) on a lessor for a discrimination offence. The defendant referred to the reluctance of the other shareholders of the housing company

to have Roma people as residents in the building; the District Court found that these grounds were illegal and constituted discrimination that met the statutory definition of a discrimination offence.

Awareness of rights is a key part of addressing discrimination and promoting equality. The Roma people are increasingly better aware of their rights, which is also evident in the complaints received by the Non-Discrimination Ombudsman. During the ROMPO2 programme, the Non-Discrimination Ombudsman participated in renewing the guide on finding rental housing targeted at the Roma population and the authorities; its aim is to increase awareness of rights<sup>28</sup>.

On the community level, the Roma people are still in a clearly weaker financial and social position than other Finns. The Ombudsman considers it important to address the structural obstacles that impede the improvement of the socio-economic position of the Roma people. The right to housing is one of the most important fundamental rights, and housing conditions have a significant impact on the opportunities to participate actively in working life and other activities in the society.

### **1.3.4 Digitalisation and the use of artificial intelligence have important links to equality**

#### **Promoting equality must play a central role in the digitalisation of services**

Digitalisation makes it possible to promote equality significantly, such as by providing services that are available regardless of the user's place of residence, disability or language. With good advance planning and equality impact assessment, the different needs of people can be met better, and the efficiency of functions can also be improved without risking the realisation of fundamental rights.

The digitalisation of the functions of society does also create challenges for the realisation of equality and the accessibility of services, however. The challenges are related to issues such as the different kinds of digital skills people have, the cost and availability of digital equipment and connections, accessibility problems in digital solutions as well as linguistic obstacles. For example, some of the older people and people with disabilities may be left outside important services because of digital functions that have been implemented in an unequal manner. The costs related to digital equipment and network connections may also lead to a part of the population being left

outside the services of the society as well as social interaction, among other things.

The Non-Discrimination Ombudsman regularly receives complaints related to digitalisation. This is one indication that equality issues and the needs of different groups of people are not yet taken sufficiently into account in digitalisation. The complaints have brought up problems such as the following: The deficiencies in the accessibility in electronic services prevent people with disabilities from using the services, and the use of paper compared to the use of online services has become more difficult in matters such as taxation. There are difficulties with dealing with the TE Services, the Social Insurance Institution of Finland (Kela) and health care electronically, and health information, for instance, cannot be accessed. In addition, some of the older people and people with disabilities have difficulties with banking. The complaints are often related to problems with strong electronic authentication.

The coronavirus pandemic increased the availability of electronic services significantly, but it also highlighted the negative effects of digitalisation. In practice, many people were excluded from using services.

Promoting equality and the inclusion of different groups of people must become a stronger goal in the digitalisation of different services and functions of the society. Authorities, employers and education providers are obligated to promote equality and assess the equality impact of their activities under the Non-Discrimination Act. The authorities in particular must assess their operating environment and aim to promote the realisation of equality with their activities on a large scale. This also applies to digital services.

The obligation to promote equality requires an effective equality impact assessment when designing, developing and using digital and artificial intelligence systems. The assessment must always take account of the special characteristics of the system's intended purpose. In addition, the accessibility of digital services must be guaranteed when designing the services. Their accessibility must also be evaluated regularly.

The Non-Discrimination Ombudsman emphasises that especially in public services, but also in banking services, among other things, sufficient options for using the services in person and by other methods must be ensured in addition to the electronic services. The authorities must not forget their obligation to provide services via multiple channels, including methods other than electronic ones.

It is necessary to enable electronic identification equally for everyone. One factor promoting this development in the right direction is the legislative proposal on the reform of the personal identity code system in early 2022. The digital identity development project led by the Ministry of Finance aims to ensure that everyone has an equal opportunity to use a digital identity in the services of the society. This is a very important goal. Access to digital services must be considered as a fundamental rights issue.

For the digital services to be equally accessible to everyone, enough digital support must be arranged, the development of digital competence and literacy must be taken care of, and the possibility of using digital equipment must be ensured. Digital support needs to be targeted especially at ensuring the equality of children, older people and people with disabilities. Attention must also be paid to the equal realisation of linguistic rights. Costs linked to digital devices may prevent access to digital services. In fact, social assistance must cover digital participation and use of services better. The Ombudsman supports the measures proposed by the Digi Everyday Advisory Board in 2021 for strengthening the realisation of fundamental and human rights in digital services.



**Promoting equality and the inclusion of different groups of people must become a stronger goal in the digitalisation of different services and functions of the society.**

## Accessible digital services build a more equal Finland

Digitalisation and digital services can offer many groups of people better opportunities for equal participation in the society and strengthen the realisation of independence and right of self-determination of people with disabilities, for example. In practice, digital services and applications must be consistently designed to be easy to use and their accessibility must be ensured without exceptions in order for this to be realised in practice.

It is important that digital services are equally available and accessible for everyone. In fact, the diversity of people must be taken into account when designing digital services. Using the services must be possible regardless of whether the individual has a visual or hearing impairment, dyslexia or learning difficulties, a memory disorder or developing Finnish language skills, for instance.

As a rule, the Act on the Provision of Digital Services imposes obligations on organisations that act as authorities. Accessibility is a key element of the operation of the authorities and public services in particular. In the view of the Non-Discrimination Ombudsman, authorities should take accessibility better into account in their procurement. For example, the authorities purchase services in order to organise events. In that case, accessibility and freedom from barriers must be taken into account comprehensively from the perspective of the accessibility of technology, interpreting into different languages, as well as the premises. Accessibility should be a critical requirement in procurement.

In addition to the authorities, accessibility requirements also apply to bodies governed by public law and some of the organisations. Accessibility requirements may also apply to the online services of certain organisations based on a special grant. Moreover, a part of the public sector is within the scope of accessibility requirements. Accessible digital services benefit all organisations, and it is important to guarantee accessibility comprehensively in the society.

## Recommendations:

- Electronic identification must be implemented equally for everyone. Legislation must be developed to implement this quickly.
- The implementation of equality and accessibility must play a central role in the digitalisation of services. Digital services must be designed and implemented so that they are equally accessible for everyone. When the services of authorities and necessary services, including banking services, are digitalised, it must be ensured that the services are provided via multiple channels.
- Digital competence and literacy must be developed, and sufficient digital support must be arranged for everyone. People with disabilities and older people in particular must be taken into account in this respect.



### **Cooperation to promote accessibility**

The Non-Discrimination Ombudsman regularly meets the accessibility unit of the Regional State Administrative Agency for Southern Finland, which is responsible for monitoring the Act on the Provision of Digital Services. In particular, the obligations set by the UN Convention on the Rights of Persons with Disabilities (CRPD) as well as the Act on the Provision of Digital Services are central to the activities of both authorities. In 2021, the Ombudsman issued a statement to the accessibility unit concerning the SISU study information system deployed by the University of Helsinki; people with a visual impairment cannot use the system independently. Among other things, students are intended to sign up for courses and manage their own studies comprehensively in the system. In the statement, the Ombudsman found that the university's actions were problematic with regard to the obligations of both the Non-Discrimination Act as well as the CPRD. The Regional State Administrative Agency gave the University of Helsinki a reprimand concerning serious accessibility problems.

### **Regulations, policies and funding related to artificial intelligence strongly steer the realisation of equality**

The use of artificial intelligence (AI) is increasing heavily in different sectors of the society. AI enables a speed, precision and volume that humans cannot match in activities such as decision-making. This is an opportunity to make many functions of the society more efficient and improve their quality. However, using AI may also replicate and even reinforce discriminatory structures. For this reason, the use of AI requires good planning, a knowledge base of high quality, forecasting the results, ethical consideration and clear preconditions. A careful fundamental and human rights impact assessment must be placed at centre stage. Legislators and other decision-makers play

a key role in targeting the equality impact of AI and preventing negative effects.

The benefits, as well as the risks, of AI to equality and other human rights have been highlighted in many international and European reports published in recent years, such as reports by the Council of Europe<sup>29</sup>, the EU Agency for Fundamental Rights<sup>30</sup>, the UN<sup>31</sup> as well as several non-governmental organisations<sup>32</sup>.

The use of AI may lead to direct or indirect discrimination. The negative impact of an individual AI system on equality, as well as discrimination in automated decision-making in particular, may be caused by many kinds of factors linked to human activity. The rules and conditions set on the algorithms used are critical. Discriminatory results may also be due to the poor quality of the data used, lack of representation in the data, and badly selected characteristics of the model. The more opaque and complex the operation of the AI system is, the more difficult it is to assess and prevent the risks of discrimination. This is emphasised especially in connection with AI systems that use machine learning.

AI may also reinforce the structural discrimination that currently exists and has previously existed in the structures and decision-making procedures of the society. An AI that uses machine learning is often based on learning from existing data; the learning happens from the decisions we have already made and the information we have produced. For example, the activities of a learning AI are defined by data related to the types of people that have previously been recruited to a specific task, who have sought health care the most actively, at whom measures by law enforcement authorities have been especially targeted, and for whose needs vehicles have been developed. The inequality of the society is reflected on the conclusions, recommendations and decisions made by an AI that learns based on data, unless effort is made to specifically prevent this.

It is also important to consider for what kind of decision-making an AI is suitable for in the first place, and which decisions should not be made by an AI at all. All of these are decisions that require human consideration, which shows how central the role that humans play is in ensuring the equality and non-discrimination of AI systems. A cer-



tain degree of uncertainty is characteristic of the conclusions and forecasts made by an AI that uses machine learning in particular, and the distortions are not necessarily always a result of poor quality data or badly selected criteria as the basis of decision-making. In fact, the equality impact of AI in different contexts of use must be studied from a broader perspective of its impact on the society than solely based on the legal definition of discrimination.

Regulation, decisions and allocation of resources related to AI and digitalisation create an important policy on the realisation of equality. The Non-Discrimination Ombudsman emphasises that legislators and decision-makers play a key role in targeting the positive impact resulting from the use of AI and preventing its negative effects.

### **An obligation to promote equality must be taken into account in the development and use of artificial intelligence**

The Non-Discrimination Act imposes a comprehensive obligation on authorities, parties with public administration duties, education providers and employers to promote equality in their operations (Non-Discrimination Act, sections 5–7 and 4). The obligation to promote equality requires active and proactive measures, and it also applies to the use of AI.

One key method of and requirement for implementing the obligation to promote equality is an effective equality impact assessment. In fact, the Ombudsman has suggested in connection with projects on the regulation of AI and information systems that a specific and sufficiently comprehensive provision on the obligation to assess the equality impact should be included in binding regulations. In this regard, the Ombudsman has considered it important to invest in the steering needed by different actors to carry out the assessment.

The regulation, operating policies and practice concerning AI must be based specifically on promoting equality instead of simply settling for preventing discrimination.

In addition to effective impact assessments aiming for real equality there are also numerous different methods to increase equality in the use of AI. The diversity of people and situations must be understood and taken into account in de-

veloping the system. In fact, a multidisciplinary approach, cooperation and inclusion of different interest groups is important during the development stage. By increasing diversity among those who develop AI systems, providing training on equality for system developers, suppliers and decision-makers, and ensuring the sufficient transparency and monitoring of AI systems, the equality of AI use can be promoted significantly.

When implementing public procurement as well as public administration strategies and knowledge management plans, the possibilities of promoting equality in the use of AI and data must be taken into account. Taking the obligation to promote equality into account, authorities must require and monitor in all of their procurements and aid related to the use of AI and purchasing technology that the supplier has made and continues to make equality impact assessments on the AI system.

Due to the wide-ranging impact of AI, information and training on the basics of AI must be provided to different population groups. In addition, investments must be made in funding AI research and innovations with the goal and perspective of promoting equality.

### **Equality must be taken into account in projects on the regulation of artificial intelligence**

Current regulations are not sufficient in all respects for meeting the equality challenges related to the use of AI. To ensure that equality is realised, new regulations are needed. In fact, regulatory projects are in progress on the national level as well as the level of the EU and the Council of Europe.

Finland must aim to ensure that effective, comprehensive and clear regulations are created on the EU level for preventing discrimination and promoting equality with regard to the use of AI. The European Commission's Proposal for a Regulation on Artificial Intelligence (AI) Systems in 2021 is not sufficient from the perspectives of equality and non-discrimination<sup>33</sup>. The Ombudsman issued a statement on the proposal for a regulation to the Legal Affairs Committee; the statement highlighted especially the following issues: Promoting equality should be intensified with EU regulation instead of simply preventing discrimination, and impact assessment and transparen-



cy obligations, for instance, should be developed from this perspective. Effective monitoring mechanisms must also be included in the regulations, and the methods of legal protection of consumers and victims of discrimination must be safeguarded. The obligations and mechanisms as well as monitoring bodies laid down in the Non-Discrimination Act as well as the Equality Act in addition to the regulations on data protection must also be taken into account in further preparations. The comprehensiveness of regulations on prohibited practices as well as the clarity and comprehensiveness of regulations on high risk applications must be assessed carefully from the point of view of realisation of equality, non-discrimination and other human rights. EU regulations must not weaken regulation and protection concerning AI on the national level that may be more comprehensive from the perspective of ensuring the equality of individuals.



### **Current regulations are not sufficient in all respects for meeting the equality challenges related to the use of AI.**

In other EU regulation projects concerning AI and social media platforms, too, effective prevention of discrimination and issues such as discriminatory hate speech must be ensured.

A project on the regulation of automated decision-making in public administration is in progress in the Ministry of Justice, and a project on the development of public administration information systems is ongoing in the Ministry of Finance. These projects are important steps towards drawing up national regulation and practices that support equality.

In connection with AI, the Ombudsman has emphasised issues such as monitoring, transparency and equality impact assessment. Transparency and documentation obligations are essential for all AI systems. Non-discrimination and equality impact assessment should be conducted on all AI systems. Effective testing should be used to

carry out a survey of discrimination risks both in connection with the development and deployment of AI systems as well as throughout their life cycle. Standards and test frameworks that are not sufficient from the perspective of achieving real equality as provided for in the national equality regulations must not be used in equality impact assessments.

### **Information and discussion about artificial intelligence and equality are needed**

In Finland, there is a need for more extensive social discussion about what kind of regulations should be drawn up concerning the development and use of AI to ensure the realisation of fundamental and human rights. In addition, a more general discussion is needed on the impact of the use of AI on equality. Awareness of the strong connection between regulations on discrimination and equality as well as the use of AI has improved in recent years. For instance, the AI courses by the University of Helsinki and the technology company Reaktor, which are available online for everyone for free, discuss equality and the prohibition of discrimination.

There is still plenty of room for improvement in awareness and knowledge, however, especially with regard to the prohibition of discrimination and obligation to promote equality laid down in the Non-Discrimination Act. The actors that develop and use AI also need support for assessing the impact on equality.

A study conducted in 2021–2022 by the University of Turku, Tampere University and Demos Helsinki on the risks of discrimination related to AI applications is currently in progress. The study “Tekoälyn vinoumien välttäminen: suomalainen arviointikehikko syrjimättömille tekoälysovelluksille” aims to avoid distortions by AI by establishing Finnish assessment framework for non-discriminatory AI applications; it implements an important entry in the Government Programme on how the government will aim to ensure that directly or indirectly discriminatory operating models are not used in AI systems and that instructions on the ethical use of AI will be drawn up for Finland. The Ombudsman participates in the expert group operating within the framework of the project. The study produces information on what kind of ma-

chine learning-based AI systems are used in Finland, on what kind of impact assessment they are based, and what kind of a discriminatory impact they may have. An assessment framework for identifying and avoiding discriminatory characteristics of AI applications will be developed in the study. After the project, the government and ministries must continue taking measures to ensure equality and non-discrimination in the use of artificial intelligence.

### **The development of artificial intelligence and digitalisation requires resources for monitoring fundamental and human rights**

Digitalisation and the use of AI are extremely significant trends that affect the realisation of equality. The authority of the Non-Discrimination Ombudsman to address discrimination and promote equality in the use of AI extends comprehensively to the activities of the public and the private sector in accordance with the scope of application of the Non-Discrimination Act. The Ombudsman's lack of authority in issues related to discrimination in working life, however, prevents the Ombudsman from investigating potential discriminatory situations related to the use of AI in recruitment, for instance.

The needs for measures by the Ombudsman to monitor and promote non-discrimination and promote equality in the use of AI are diverse, and they grow along with the increasing use of AI. In addition to this, the obligation of the ministries and all authorities to invest in non-discriminatory use of AI that promotes equality in their own fields and administrative branches must also be taken into account.

The Ombudsman considers it extremely important that the actors monitoring the realisation of fundamental and human rights can focus on monitoring the fundamental and human rights impact of the use of AI applications and address violations. This requires allocating resources to monitoring. In the future, the Non-Discrimination Ombudsman should be able to carry out independent, sector-specific investigative and monitoring work linked to the use of AI and digitalisation, as well as related work on promoting equality. For example, individuals who have been targeted by automated decision-making may not necessarily know that

they have been discriminated against, and it is not easy for them to receive the necessary information from companies in order to assess whether discrimination has occurred.

The Ombudsman also considers it necessary to strengthen the exchange of information and cooperation with other authorities carrying out monitoring, such as the Data Protection Ombudsman, the Ombudsman for Equality, the consumer authorities, the Financial Supervisory Authority as well as the supreme overseers of legality.

So far, only a few individual complaints on automated decision-making concerning the granting of credit have been submitted to the Ombudsman for processing. It is likely that the number of complaints will grow as the use of automated decision-making and AI as well as awareness of it increase.

Equinet, the European Network of Equality Bodies, has highlighted the central role of equality bodies and the need for sufficient resources to ensure the non-discriminatory use of artificial intelligence in its report on AI<sup>34</sup>.

### **Discriminatory profiling based on artificial intelligence is a risk that must be prevented in the financial and security sectors**

The growth in the amount and availability of data enables profiling, which may cause significant risks of discrimination in many sectors. The Non-Discrimination Ombudsman has drawn special attention to the profiling that occurs in the granting of credit. In order to prevent discrimination and promote equality, it is nevertheless necessary to operate in several different sectors, such as insurance, recruitment and the security sector.

The Non-Discrimination Ombudsman has focused monitoring and equality promotion work especially on the granting of credit due to a case concerning automated credit decisions that the Ombudsman brought to the National Non-Discrimination and Equality Tribunal in 2017. In the case in question, the operation of the creditor was based on an automated decision-making system, in which the credit applicants were rated based on their place of residence, gender, native language and age, among other things. In its decision, the Tribunal found that the creditor's actions had

been discriminatory and imposed a significant conditional fine on the company<sup>35</sup>. After the case, the Ombudsman has continued the discussion on potentially discriminatory practices in the field more extensively with the Financial Supervisory Authority. In 2020, the Financial Supervisory Authority issued a bulletin with instructions to banks on non-discriminatory credit decision-making<sup>36</sup>.

At the end of 2020, the UN Committee on the Elimination of Racial Discrimination (CERD) issued a recommendation to Member States on the use of AI and the prohibition of ethnic profiling by law enforcement officials<sup>37</sup>. The Committee stated that the use of new technologies in the security sector may increase racism and discrimination. The Committee issued recommendations for measures related to impact assessment and the transparency of activities in particular. The Committee emphasised the obligation of the States to ensure that the companies that develop and use AI also act in a non-discriminatory manner. The Ombudsman has proposed to the Ministry of the Interior and the National Police Board that Finland should conduct an assessment of the need for measures based on the General Recommendation of the Committee and that there should be further discussion on the topic with the Ombudsman, researchers and interest groups.

### Recommendations:

- Comprehensive and precise obligations concerning equality impact assessment and transparency must be included in the regulations on AI and automated decision-making.
- Efficient and independent monitoring intended to ensure non-discrimination concerning artificial intelligence must be enabled not only through regulation but also through adequate resourcing of the monitoring.
- The obligation to assess and promote non-discrimination must be complied with in all artificial intelligence-related activities of public administration, including regulative projects, and in public procurement, artificial intelligence projects of ministries and authorities, knowledge management and data utilisation strategies and research funding.
- Ministries must ensure that adequate steering and support for drawing up efficient and continuous impact analyses concerning non-discrimination are available to all parties utilising artificial intelligence in both the public and private sectors.



### **1.3.5 Every child and young person must be able to feel that they are valuable as themselves**

The way equality is realised affects the position and opportunities of people from childhood. Discrimination violates fundamental and human rights, and it may affect the lives of people and their inclusion in the society comprehensively.

Children and young people are in an important, sensitive and vulnerable situation in life, when their own personality is being constructed and their relationship with the world around them is developing. Children and young people should have an environment, in which they can grow and develop as themselves without discrimination or harassment. Especially for many children and young people who belong to a minority group, this is not realised, however. Studies show that many young people who belong to a minority have a greater risk of experiencing discrimination and bullying at school than young people who belong to the majority population.

Loneliness and exclusion are detrimental to the welfare of children. Discrimination, racism and hate speech deteriorate the quality of life and affect the health, wellbeing and sense of security of people comprehensively.

It is important to invest in the equality of children and young people in all areas of the society, so that everyone could have genuinely equal opportunities to participate in education and working life as well as all other aspects of life.

#### **Racism and discrimination affect the lives of children and young people already from an early age**

Ethnic and religious minorities experience racism in Finland in the form of individual racist acts as well as discrimination and exclusion in everyday life. Racism may occur in many ways in everyday life already in youth and childhood.

The report of the Non-Discrimination Ombudsman on the discrimination experienced by people with an African background showed that racism affects the lives of Finns with an African background comprehensively. The majority of respondents to the survey had experienced discrimination in education, and nearly one third of the respondents had already experienced discrimination in early

childhood education and care before school. The results correspond to other research conducted in Finland on racism in the education, which shows that racism is strongly present at schools.

Deviating from normative whiteness affects how you are seen and treated at school by the teaching staff and other pupils or students. Young people with a foreign background are at a higher risk of being bullied at school or not having a good friend compared to young people who belong to the majority population going to the upper level of comprehensive school. Racism in education is discussed in section 1.3 of this report.

**“I don’t feel like I’ve got the same... opportunities as the other people here get. There’s also that I’ve got to explain myself all the time. And explain my whole existence, that gets really hard.”**

- Non-Discrimination Ombudsman’s report on the discrimination experienced by people of african descent

Many Muslim children and young people experience prejudices related to religion that affect their inclusion in the society. According to the EU MIDIS II study of the EU Agency for Fundamental Rights, 45% of Finnish Muslim respondents of all ages had experienced harassment during the past year<sup>39</sup>. The average of the EU countries was 27%. The report of the Ministry of Justice shows that associating people with “characteristics” linked to religion was highlighted in the hate speech and harassment experienced by Muslims, manifesting in unknown people shouting things and behaving aggressively<sup>40</sup>.

There is a lot of under-reporting linked to experiences of racism and discrimination based on religion. The report of the Non-Discrimination Ombudsman on the discrimination of persons with an African background shows that most do not report the discrimination they experience to any official party. The most common reason is that they do not trust that an individual report on discrimination would amount to anything, because racism

is such a massive problem. The results of the EU MIDIS II study are similar: only 31% of the Muslim immigrants and their descendants had reported discrimination.

Racism also has a negative impact on mental health. Experiencing racism repeatedly may cause depression, anxiety and the feeling of worthlessness. Research has shown that mental health services are built on terms of whiteness, which is why young people who are members of visible minorities are often left without the help they need<sup>41</sup>.

Removing racism requires active anti-racist measures in all aspects of the society. The Government Action Plan against racism was published in the autumn of 2021<sup>42</sup>. The Action Plan is an important step towards addressing racism, and implementing the Plan requires long-term work. The Non-Discrimination Ombudsman emphasises that taking the effects of structural racism into account is crucial for the implementation of the Action Plan. Structural racism must be identified and addressed actively and systematically everywhere in the society, including the activities of the authorities. In the autumn of 2021 and early 2022, the Ministry of Justice and the Non-Discrimination Ombudsman implemented the I Am Antiracist campaign, which highlighted concrete antiracist actions and encouraged people and organisations to work against all forms of racism<sup>43</sup>.

### **The wellbeing of young LGBTI people must be ensured**

There is still much work to do to prevent discrimination and promote equality in the everyday lives of young LGBTI people.

The School Health Promotion study in 2012 showed the inequality of young people belong to gender or sexual minorities compared to other young people in many aspects of health and wellbeing<sup>44</sup>. The results of the study show that young people who belong to gender and sexual minorities had considerably more concerns related to health and wellbeing compared to young people who do not belong to a minority. Young LGBTI people had also experienced loneliness and bullying as well as exhaustion at school. In addition, the results show that it is more common for young LGBTI people not to receive help and support for their problems compared to young people who do

not belong to a minority. This is a serious message that the society must address.

For some of the young people, these problems were emphasised during the coronavirus pandemic: some young LGBTI people experience problems and insecurity in their home environment, and many of the safe meeting places were closed and their operations paused. Therefore, one's home may have become the only place available to the young person, which might end up causing them distress.

Every young person has the right to inclusion, support and a safe environment to grow as themselves. It is the adults' job to make sure that this is also realised in practice. The Non-Discrimination Ombudsman emphasises that it is important that schools, hobbies and places like social services and healthcare services have expertise for meeting young LGBTI people and creating a safe space.

Several narrow social norms related to gender and sexual orientation create stress in the lives of many young people. The position of young LGBTI people can be improved by questioning and dismantling normative assumptions about gender and sexuality everywhere in the society. It is important that the society has space for everyone to exist and live their own lives.

Work must be done to ensure that young LGBTI people can trust that their wellbeing and human rights are taken care of in our society. This also means taking them into account in the reform of legislation. One of the most urgent examples is the legislation on transgender people, which must be reformed without delay so that it honours the right of self-determination and respects fundamental and human rights, including those of young people.



**Work must be done to ensure that young LGBTI people can trust that their wellbeing and human rights are taken care of in our society.**



In the autumn, the Ministry of Justice published a situational assessment of the fundamental and human rights of sexual and gender minorities in Finland<sup>45</sup>. The report was prepared to support the Finnish Government in its work to systematically promote the fundamental and human rights of LGBTIQ+ people. The report covers the administrative branches of nearly all ministries and it is intended to serve as a basis for the development of policy measures. According to the Non-Discrimination Ombudsman, the objectives and measures that were included in the assessment concerning inclusiveness must be implemented effectively.

### **Discrimination may make it more difficult to enter working life**

Discrimination has a harmful effect on not only the wellbeing and inclusion of children and young people, but also their future outlook and opportunities in working life, for example.

The work experience (TET) periods at school are intended to enable pupils to learn about working life while at school, but many young people who belong to a minority, such as young Roma people and young people with disabilities, have difficulties with finding a TET position. In fact, many young people have to face discrimination in working life already during their basic education. Even today, deeply rooted prejudices and attitudes are a major obstacle in the way of employment of young Roma people and people with disabilities, among others.

The fear of difficulties in finding employment may affect the experiences of young people regarding what they will be able to do in the future or what kind of study path the young person will choose. The study by the Non-Discrimination Ombudsman showed that people with an African background experienced racialising guidance in guidance counselling<sup>46</sup>. It is important to encourage people belonging to minorities, just like all other young people, and guide them to fields that match their wishes, interests and performance at school.

**“In comprehensive school, the guidance counsellor commented that people who look like me won’t be successful in general upper secondary school and discouraged me. Regardless of my own wishes, the counsellor tried to push options at me that I didn’t want and that were clearly below my level.”**

- Non-Discrimination Ombudsman’s report on the discrimination experienced by people of african descent

Discrimination is common in working life, and it affects many people’s opportunities to find employment. The Non-Discrimination Ombudsman’s report on the discrimination experienced by people with disabilities shows that young people with disabilities have more experiences of discrimination in working life than older respondents. This indicates that finding the first job is challenging for young people with disabilities. Promoting the inclusion of people with disabilities in working life is discussed in section 1.3.

Studies also show that people with a foreign background and people who belong to visible minorities experience a lot of discrimination and unequal treatment at the workplace. For example, the Non-Discrimination Ombudsman’s report on the discrimination of people with African background shows that experiences of discrimination and racism in working life are common and that prejudices and racism have a negative effect on the work environment.

Structural discrimination in working life may lead to people belonging to minorities being driven to low-wage fields or jobs that do not correspond to their training. In the long term, this may lead to the segregation of working life and have a negative impact on the income level of minority members throughout their lives.



### **Promoting the equality of children and young people requires active long-term measures**

Discrimination may have an accumulative effect throughout people's lives. If someone already has to face discrimination or racism as a child, that affects the person's self-image, future outlook and wellbeing. Discrimination and racism may cause children and young people to experience minority stress, the feeling of exclusion and loneliness.

Dismantling prejudices and structural discrimination is necessary to create a more equal society. In many ways, equality and inclusion are linked to the overall values and attitudes of the society. The wellbeing and inclusion of children and young people and their opportunities in the society can be improved with political actions that aim to reduce discrimination and promote equality.

The Non-Discrimination Ombudsman emphasises the obligation of the authorities as well as education providers and employers to promote equality systematically and address discrimination purposefully. Ensuring that every child and young person can grow up in a safe and accepting environment must be the common goal of the whole society. It must be safe for each child and young person to grow and develop and be valued, seen and heard as themselves.

### **Promoting diversity in the police and the Finnish Defence Forces increases inclusion**

Seeing people they can identify with in all aspects of the society affects what kind of opportunities to participate in and be a part of the society children and young people see for themselves. The authorities and representatives of public authority are responsible for ensuring the equality of young people to a great extent. Finland is a diverse country, and it is important that a wide variety of different kinds of people are also visible in official organisations. This may also increase the trust of people belonging to minorities in the authorities. The way young belonging to minorities are placed in jobs in the field of security or how the Finnish Defence Forces meets them, for example, has a major importance in principle.

As both authorities and employers, the police and the Finnish Defence Forces have an obligation to promote equality. The Non-Discrimination Ombudsman has had discussions with the police and

the Finnish Defence Forces on allowing the use of hijab, a scarf used by some Muslim women that covers the hair and the neck, as a part of the uniform. The Non-Discrimination Ombudsman has supported the Ministry of the Interior in its investigation into the use of a scarf together with the police uniform. In many other countries, such as Sweden, the United Kingdom and Canada, using a scarf and other religious headwear has already been possible for a long time.

In Finland, too, there are good examples of making it possible to use religious items of clothing with work clothes. For instance, HUS, the Hospital District of Helsinki and Uusimaa, offers its employees a scarf that matches the uniform. In Finland, legal practice and law enforcement decisions have not shown any support to restrictions of the use of religious symbols or clothing, either; instead, the starting point has been that prohibiting the use of a scarf at work is not possible, for instance. For example, an employee of a clothing shop was issued a sentence for a discrimination offence due to sending an employee home for wearing a scarf.

The Non-Discrimination Ombudsman finds that it is important that Finland being multicultural and multi-religious is also visible in official organisations. The Ombudsman also emphasises that everyone should have an equal opportunity to perform military service or seek the profession they want regardless of their background and religion. In this way, the realisation of the equality of children and young people at different stages of life can also be ensured.

#### **Recommendations:**

- The use of the scarf worn by Muslim women and other comparable headwear as a part of the uniform should be made possible by the police and the Finnish Defence Forces.
- The proposed objectives and measures included in the assessment 'Towards a more inclusive Finland for LGBTIQ people' must be implemented effectively.

## 1.4 The equality of the Sámi and the realisation of their rights must be improved

The Sámi are indigenous people; the Constitution of Finland guarantees their right to their own language and culture and related self-government. The Non-Discrimination Ombudsman has promoted the realisation of the rights of the Sámi both by issuing statements in legislative projects as well as in individual cases, in which the Sámi have faced discrimination prohibited by the Non-Discrimination Act based on their language or origin.



**The Non-Discrimination Ombudsman considers the reform of the Act on the Sámi Parliament as an important step towards the better realisation of the rights of the indigenous Sámi people in Finland.**

### 1.4.1 The reform of the Act of the Sámi Parliament is a significant step for the rights of the Sámi people

The most central institution in the self-government of the Sámi is the Sámi Parliament. The existing Act on the Sámi Parliament has deficiencies; several attempts to correct them have already been made, but so far the legislative proposals have failed.

The Non-Discrimination Ombudsman considers the reform of the Act on the Sámi Parliament as an important step towards the better realisation of the rights of the indigenous Sámi people in Finland. In their recommendations concerning Finland, the monitoring bodies of both the Council of Europe and the human rights conventions of the United Nations have repeatedly brought up the need to promote the equality and right of self-determination of the Sámi. The issue was addressed the most recently by the UN Human Rights Committee in their recommendations based on the periodic report of Finland in May 2021<sup>47</sup>.

In the view of the Ombudsman, the legislative proposal would promote the realisation of these goals. The legislative proposal strengthens the right of self-determination of the Sámi in matters related to their own language and culture. The amendments to the act are also a response to the human rights violations concerning matters related to inclusion in the electoral roll of the Sámi Parliament, presented in the decisions issued by the UN Human Rights Committee in 2019<sup>48</sup>.

The Sámi Parliament is elected to implement the right of self-determination related to language and culture. The definition of a Sámi in the proposal ensures that the people included in the electoral roll have a living connection to the Sámi language and culture.

The Non-Discrimination Ombudsman finds that the proposed changes to the legislation concerning the prohibition of discrimination both in general and specifically in connection with inclusion in the electoral roll promote the realisation of the rights of the indigenous Sámi people<sup>49</sup>. According to the proposal, the Supreme Administrative Court would remain as the final appeal body, but with a more limited authority than it currently has. The Supreme Administrative Court could resolve appeals, in which a justified claim concerning discrimination or arbitrariness has been presented. In the view of the Ombudsman, this is an important safeguard for the legal protection of individuals.

### 1.4.2 The new wellbeing services counties play a central role in the realisation of the linguistic rights

The Sámi Language Act defines the linguistic rights of the Sámi; the realisation of linguistic rights in public services is a key part of it. The health and social services reform that will enter into force in 2023 is of crucial importance, and the new wellbeing services counties play a central role in the future realisation of the linguistic rights of the Sámi. In the statements issued both during the preparatory phase as well as the hearing of the parliamentary committees, the Non-Discrimination Ombudsman suggested that an obligation to organise social welfare and health care services in the Sámi language should be included in the Act on Organising Healthcare and Social Welfare

Services<sup>50</sup>. The organisation obligation was not included in the legislation approved by the Parliament, however; instead, section 5 (subsections 2–3) on the Act on Organising Healthcare and Social Welfare Services includes the following provision on the right to use the Sámi language:

Customers have the right to use the Sámi language in the social welfare and healthcare services provided in the municipalities of the Sámi homeland as well as in the wellbeing services county of Lapland in those social welfare and healthcare services that are only provided in operating units located outside the municipalities of the homeland. In addition, the customers have the right to use the Sámi language in the wellbeing services county of Lapland in the social welfare and healthcare services provided in units outside the municipalities of the homeland allocated by the wellbeing services county of Lapland for the use of the residents of the municipalities of the homeland based on the accessibility of services referred to in section 4. Otherwise, the right to use the Sámi language is provided for in the Sámi Language Act (1086/2003).

If the social welfare or healthcare personnel do not know the sign language or other language used by the customer, or if the customer cannot be understood due to a disability or another reason, in addition to the provisions of subsections 1 and 2, interpretation and arranging for an interpreter must be ensured as far as possible when providing services.

In its report (StVM 16/2021), however, the Social Affairs and Health Committee stated that it agreed with the demand of the Constitutional Law Committee that the Government must monitor and assess what kind of impact the implementation of the reform has on the realisation of the rights of Sámi language speakers in practice and, if necessary, take the measures required to ensure that patients and customers have the opportunity to receive services in their own language. The Non-Discrimination Ombudsman finds that in order to guarantee services for the Sámi, it is crucial that the right of self-determination of the

Sámi as well as their linguistic rights are taken comprehensively into account in the implementation of the reform.

### **1.4.3 Contacts by the Sámi show that there is a lack of professionals with language skills**

In recent years, the Non-Discrimination Ombudsman has received 5–10 complaints related to the equality of the Sámi per year. Despite the small number of complaints, they involve a broad range of social welfare and healthcare services, education and harassment targeted at the Sámi. In most of the cases, the Non-Discrimination Ombudsman has provided advice on how to promote equality, but some of the cases have progressed to further investigation.

A recurring theme in the complaints is the lack of professionals with language skills. Despite recruitment attempts, personnel with sufficient Sámi language skills are not available. To solve the problem, investments must be made both in language training as well as the training of experts in different fields in the Sámi homeland.

There has been significant development in the situation of both the Sámi languages as well as teaching in the Sámi language during the last few decades. According to the Basic Education Act, pupils in the Sámi homeland have the right to receive education primarily in the Sámi language. Outside the homeland, there are no similar rights or the related obligations of the municipalities. When taking into account the fact that currently approximately 80% of Sámi children live outside the homeland, it is reasonable to ask whether this kind of different treatment based on residence is justified. Education in the Sámi language is already offered in a few of the largest cities. Developing the legislative basis and financial support structures of education in the Sámi language outside the homeland would help protect the opportunities of Sámi children to be taught in their own language more comprehensively.

The right to early childhood education and care in the Sámi language has not been limited based on the area in the same way as basic education in the Sámi language. In early childhood education and care, the lack of qualified professionals who speak the Sámi language is especially severe. At

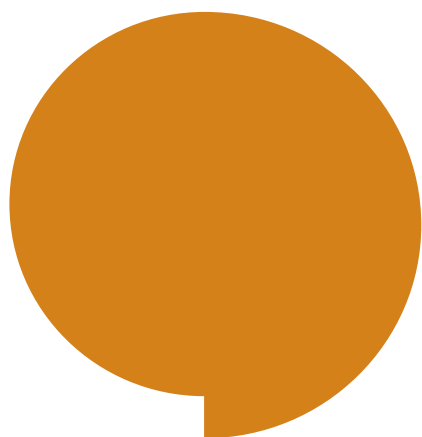
the same time, the position and funding of language immersion in the Sámi language are often on shaky ground. Investing in the early childhood education of children who already speak the language and those who are reviving the language improves the preconditions of training Sámi-speaking professionals for all fields in the future.

### Recommendations:

- The Act on the Sámi Parliament must be reformed in a way that strengthens the right of self-determination of the Sámi.
- In order to safeguard the social welfare and healthcare services of the Sámi, the right of self-determination of the Sámi and their linguistic rights must be taken comprehensively into account in the implementation of the health and social services reform.
- The lack of resources that hinders the realisation of the linguistic rights of the Sámi must be addressed by additional investments in language training as well as training experts in different fields in the Sámi homeland.

### Deficiencies in the holiday and stand-in scheme for reindeer herders must be corrected

In the spring of 2021, the Sámi Parliament requested a statement on the holiday and stand-in scheme for reindeer herders from the Non-Discrimination Ombudsman. Holiday and stand-in help for reindeer herders is much more limited than for other agricultural entrepreneurs. Unlike other agricultural entrepreneurs, reindeer herders cannot receive stand-in help due to parental leave or conscript service, for instance. This limitation affects young Sámi people in particular. The Ombudsman found that the narrowness of holiday and stand-in help for reindeer herders compared to the opportunities of agricultural entrepreneurs to receive holiday and stand-in help creates an assumption of direct discrimination prohibited by the Non-Discrimination Act. After the statement issued by the Non-Discrimination Ombudsman, the Ministry of Social Affairs and Health has taken measures to reform the legislation<sup>51</sup>.



## 2. The National Rapporteur on Trafficking in Human Beings

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### 2.1. Human trafficking is an extensive and serious offence that often remains hidden

Work against trafficking in human beings has been under discussion increasingly in Finland. The Action Plan against trafficking in human beings includes a wide range of measures for addressing human trafficking and identifying the victims. A special police unit focusing on trafficking offences is an important step in implementing criminal liability more efficiently. The legislation on helping the victims is also being amended.

As the National Rapporteur on Trafficking in Human Beings, the Non-Discrimination Ombudsman monitors phenomena related to human trafficking. The Ombudsman draws up reports, participates in national and international activities as well as legislative and development projects. The Ombudsman can address shortcomings in cases that involve individual victims of human trafficking and provide advice and suggestions to ensure the rights of victims of human trafficking. A requirement for independent reporting is the Non-Discrimination Ombudsman's extensive right to receive information, including confidential material.

Anti-trafficking activities in Finland have developed a great deal in the last few years. The number of parties involved in criminal investigations, sentences, identified victims and anti-trafficking activities has multiplied. As the actors and the anti-trafficking expertise grow, the role of the Non-Discrimination Ombudsman as a National Rapporteur on Trafficking in Human Beings also changes. For example, thanks to attorneys specialising in human trafficking, the Non-Discrimination Ombudsman has not assisted victims of

human trafficking at courts of law in recent years, despite having the authority to do so. The resources allocated to reporting on trafficking in human beings are limited, which means that choices must be made concerning what the Non-Discrimination Ombudsman should focus on in the work against human trafficking. Autonomous and independent reporting, drawing up reports on phenomena related to human trafficking and issuing recommendations are at the heart of the activities.

Human trafficking has also become more visible in public discourse. Examples of exploitation in Nepalese restaurants and the poor situation in cleaning companies that have undergone a tendering process have made it visible how victims of human trafficking may work at the restaurants in which we eat and the schools our children go to. Victims of human trafficking are visible, but their exploitation is carefully hidden. However, human trafficking is not only an issue of immigration; it also applies to Finns and those who live permanently in Finland.

Human trafficking is also identified better in its different forms. In a study on the conditions, activities and safety of women prisoners in 2020, it was found that there are people serving prison sentences in Finland who may have been victims of human trafficking<sup>52</sup>. According to international obligations, victims of human trafficking must not be punished for an offence they have committed as a result of becoming a victim of human trafficking. This requires identifying the exploitation of victims of human trafficking in criminal activities.

In its annual reports, the Assistance System for Victims of Human Trafficking presents information about phenomena related to human trafficking. Victims of human trafficking have been identified in e.g. forced marriages and forced begging and in connection with domestic violence. The definition of human trafficking is open and covers different

forms of exploitation, which means that learning more about human trafficking results in identifying victims better in different situations.



### **The root causes of human trafficking can be found in the exploitation of people in a vulnerable position.**

Forced marriage is one form of human trafficking, even if all forced marriages do not meet the definition of human trafficking. At the moment, forced marriages are considered punishable according to the Criminal Code as human trafficking or coercion. The Ministry of Justice has assessed the separate criminalisation of forced marriages. The Non-Discrimination Ombudsman has supported the criminalisation of forced marriages as a separate offence. Forced marriage could still also meet the definition of human trafficking. The starting point of potential changes in the Criminal Code concerning forced marriage must be strengthening the victim's legal protection. However, the Marriage Act is being amended so that in addition to divorce, a forced marriage could also be annulled. In that case, for instance, the person's civil status will be restored to what it was prior to the forced marriage.

Forced marriage is not the only form of human trafficking in family relationships. A family member may be exploited sexually, in forced labour or criminal activities. Such situations have been identified in recent years. Some of the victims have sought help from the Assistance System for Victims of Human Trafficking or other organisations; individual cases have been heard in court. Human trafficking is a gendered phenomenon inextricably linked to domestic violence and violence against women. The Non-Discrimination Ombudsman's field of activities will expand with the establishment of the task of a National Rapporteur on Violence against Women in 2022. After this, there will be opportunities to focus even more closely on human trafficking as a phenomenon from a gender perspective in the reporting on human trafficking.

Identifying and defining new forms of human trafficking is not easy. Even though victims are being identified and helped, establishing legal practice on the phenomena is much slower. In addition, the judgments are often confidential. This makes it more difficult to use examples, provide training and make the phenomenon visible. Protecting the victims is necessary, but it would be important to make the analysis of the definitional elements available for the use of anti-trafficking experts. This would improve the identification of situations, in which the definition of human trafficking may be met.

It is also essential to look at the shadowed areas of the society from the perspective of human trafficking. Marginalised people, such as homeless people, substance abusers and drug addicts are exposed to abuse due to their vulnerable position. Often human trafficking or similar exploitation may be visible for those who work in services with a low threshold, but the phenomena are not identified as human trafficking; instead, they form a part of the tangle of problems faced by marginalised people. Even though anti-trafficking work is developing and there is more discussion about the topic, training on human trafficking must still be provided, including to new target groups. The root causes of human trafficking can be found in the exploitation of people in a vulnerable position. For this reason, those who work with such people should be trained to identify human trafficking as a phenomenon and refer the victims to assistance.

## **2.2 Developing anti-trafficking activities**

### **2.2.1 The Action Plan against Trafficking in Human Beings provides a framework for multidisciplinary activities**

Anti-trafficking activities in Finland are based on international agreements, EU Directives and national legislation. The bodies that monitor the implementation of international agreements assess the activities of countries and issue recommendations to make them more effective. This chapter



discusses the development of activities to combat trafficking in human beings in light of recommendations as well as the key parts of the national action plan.

The most important directives referred to in this report include the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (later referred to as the Anti-trafficking Directive) as well as the Directive 2003/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (later referred to as the Residence Permit Directive).

In the previous report to Parliament, the Non-Discrimination Ombudsman issued several recommendations on developing the activities against trafficking in human beings. The Ombudsman recommended clarifying the legislation on assistance to victims of human trafficking and changing the Aliens Act with regard to the residence permit requirements for victims of human trafficking. The competence of the occupational safety and health authorities concerning trafficking offences was expanded in accordance with the recommendation of the Ombudsman, and the related Government proposal was approved by the Parliament in the autumn of 2021 (HE 94/2021 vp, 920/2021). The preparation of separate legislation concerning assistance to victims of human trafficking is discussed in the next chapter.

For the first time in Finland, anti-trafficking activities have been included in the goals of the Government Programme. The Government Anti-Trafficking Coordinator is posted in the Ministry of Justice, and the Action Plan against Trafficking in Human Beings for the years 2021–2023 was published in 2021<sup>53</sup>. Coordination at the Government level has proven to be necessary in promoting work against human trafficking, and it should be regularised. To ensure that the coordination is effective and efficient, sufficient operating conditions for it must be ensured.

A wide range of representatives of different administrative branches and non-governmental organisations were included in the preparation of the action plan in the form of working groups, among other things. Victims of human trafficking

were heard as experts by experience. Recommendations issued to Finland by monitoring bodies of international human rights agreements were taken into account in the work. The action plan has several strategic objectives. Exploitation must be detected by the authorities, the victims must be reached and identified and they must receive the assistance they need. The objectives also include the establishment of criminal liability, cooperation on a wide front in combating human trafficking and development of anti-trafficking activities on a data-driven basis. The action plan agrees on 55 actions to implement the plan and reach the objectives.

The Action Plan against Trafficking in Human Beings for the period 2021–2023 must be implemented in full. The next, cross-administrative action plan must be prepared in time based on the current Action Plan. The Action Plan is an important tool for the strategic development of anti-trafficking work. Several studies have been carried out within the framework of this Action Plan; they create a knowledge base for developing anti-trafficking activities. Implementing the recommendations and observations that have come up during the studies requires cross-administrative work that will continue after the current Action Plan period. Implementation in other administrative branches must be also ensured.

The assessment of the current Action Plan must be taken carefully into account in the next action plan. In the action plan, it is also important to take account of preventing trafficking in children, identifying child victims and their sufficient support services for recovering from human trafficking and preventing further victimisation in more concrete ways.

The coordination of anti-trafficking work must be established so that its operating conditions are sufficient. The key purpose of coordination is to prepare the next cross-administrative Action Plan for anti-trafficking work.

Human trafficking as an issue has also been raised in other programmes, such as the Action Plan for Combating Violence against Women, the Government Action Plan for Gender Equality, the National Child Strategy as well as the Action Plan for the Prevention of Irregular Entry and Stay. Human trafficking is a part of the issues mentioned

above, and anti-trafficking work is strengthened when it is included as a part of other structures. It is important to do anti-trafficking work on a wide front.

The implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No.197) is monitored by GRETA, or Group of Experts on Action against Trafficking in Human Beings. GRETA issued an evaluation report with recommendations for Finland in the spring of 2019. Some of the recommendations were the same as during the first round of evaluations in 2015, such as the recommendation on developing a National Referral Mechanism (NRM) for referring victims of human trafficking to assistance. GRETA has also repeatedly told Finland to develop a comprehensive and coherent data collection system on trafficking in human beings that would compile statistical information gathered by various actors.

Human trafficking is a phenomenon that hides itself, meaning that its extent is difficult to estimate. Data-driven development and targeting of measures requires having basic information such as statistics available, and it is supported by research focusing on different themes. In addition to the National Rapporteur on Trafficking in Human Beings, information about the phenomena of human trafficking is collected by the Assistance System for Victims of Human Trafficking, the police and different organisations. The annual review of the Assistance System for Victims of Human Trafficking is updated regularly, and it is currently the most comprehensive compilation on human trafficking as a phenomenon in Finland. There is no established public data collection and publication method for crime prevention or the assistance provided by the municipal social and health care services, for instance.

The ongoing information system projects by different actors, such as the police, affect the kind of information available for each actor at the moment. During the work, Non-Discrimination Ombudsman has observed that the non-standardised data generated by different parties may change depending on the time when it is requested. The issue may often be due to the terms of the data request or retrieval from the system. Year after year, Statistics Finland collects comparable data

on the same topic for statistics. Standardisation means that the statistics are reliable. Both statistical information on human trafficking and information on trafficking as a phenomenon must be collected, because neither is sufficient alone. The Non-Discrimination Ombudsman considers it important to develop operating models for data collection in accordance with the Action Plan against Trafficking in Human Beings.

### **2.2.2 Preparing separate legislation on victims of human trafficking**

In the previous report for the Parliament, the Non-Discrimination Ombudsman issued a recommendation on the development of legislation on assistance for victims of human trafficking. The recommendations are based on the observations made in the report 'An unknown future' (Tuntematon tulevaisuus, in Finnish). In the summer of 2020, a working group preparing the reform of legislation on assistance for victims of human trafficking started at the Ministry of Social Affairs and Health (STM/054:00/2020).

The objective of the Government Programme of Sanna Marin's Government is to improve the position of victims of human trafficking in various ways. Clarifying the current legislation and the practices of assisting victims of human trafficking was set as the goal of the legislative working group on assistance for victims of human trafficking. The victims' right to assistance measures should be realised equally regardless of where the victims live or whether they have a municipality of residence or not. In addition, the link between assistance and the criminal procedure would be weakened. Proposals for legislation on safe and supported housing services for victims of human trafficking would also be made in connection with the preparation of separate legislation.

In practice, the work on integrating assistance for victims of human trafficking as a part of social and health care services has proved to be difficult. Building a separate set of services for victims of human trafficking within the social and health care system has met resistance. The Assistance System for Victims of Human Trafficking does a lot of work that would require specialised methods in a social and health care organisation. For example, the police can request an employee of

the Assistance System for Victims of Human Trafficking to join their operation to take care of the practicalities of assisting the victims, which in turn helps the police focus on the criminal investigation. Anyone can get advice and assistance from the telephone helpline of the Assistance System. In case of an acute need for housing, the police can turn to the Assistance System for Victims of Human Trafficking or organisations in addition to on-call social services.

While writing this report, the work done to reach the goals of the Government Programme is in progress, and the direction of preparations has changed. Drawing up separate legislation on providing assistance to victims of human trafficking has been abandoned. In addition, amendments would be made to the Act on the Reception of Persons Applying for International Protection and on



### **Providing assistance for victims of human trafficking must be victim-oriented, and the structures must be able to meet the victims' needs.**

the Identification of and Assistance to Victims of Trafficking in Human Beings (the Reception Act). Changes to the Reception Act are within the field of the Ministry of the Interior, which means that in practice that the preparation is moving from the Ministry of Social Affairs and Health to the Ministry of the Interior. Instead of drawing up a separate act, the Ministry of Social Affairs and Health would include references to victims of human trafficking in social and health care acts and take care of safe and supported housing services for victims of human trafficking. In addition, the Ministry of Social Affairs and Health should develop the social and health care service system so that the ability of wellbeing services counties to assist victims of human trafficking is ensured.

During the preparation, the Non-Discrimination Ombudsman has been concerned about how good practices as well as the special status of victims of human trafficking that already exists in the

legislation can be safeguarded. Changes in legislation are needed so that the problems discovered in the connection between identification and assistance and the criminal process, for instance, can be corrected. The purpose of assistance is to support the recovery of the victim and prevent revictimisation. This also requires safe and supported housing services for victims of human trafficking. Providing assistance to victims of human trafficking requires cooperation between several professionals, which means that exchange of information between authorities must be possible when helping the victim requires it.

The health and social services reform will become reality in 2023, when the wellbeing services counties will start taking care of the social and health care services. The goal of the reform is to strengthen basic services and include all operations within its scope. In the social and health care system, victims of human trafficking are a marginalised group, and their needs may be largely the same as other clients of social and health care services. There is nevertheless a need for special expertise. In practice, referral to social and health care services is not always simple, and the services are not familiar with the approach specific to human trafficking, or they do not know how to take it into account. In order to improve the situation, expertise and instructions about human trafficking must be increased in the social and health care system. Providing assistance for victims of human trafficking must be victim-oriented, and the structures must be able to meet the victims' needs.

The Non-Discrimination Ombudsman is concerned about whether the goals of the Government Programme with regard to assistance for victims of human trafficking can be achieved. The Non-Discrimination Ombudsman considers the implementation of the following measures important:

- Safe and supported housing services for victims of human trafficking must be provided by law. At the moment, safe and supported housing that would meet their needs may not be available for victims of human trafficking. Shelters are only open to those victims of human trafficking whose situation is linked to domestic violence. Safe and supported housing services

are an important factor in stabilising the situations of victims of human trafficking, enabling their recovery and preventing revictimisation.

- There are no established national models in social welfare and healthcare for identifying and assisting victims of human trafficking. The practices vary a great deal between different municipalities. In connection with the health and social services reform, well-functioning procedures must be built for wellbeing services counties in order to identify the victims of human trafficking and refer them to assistance. Referral models must be developed in cooperation with different authorities, organisations that support the victims of human trafficking as well as the Assistance System for Victims of Human Trafficking. The Ministry of Social Affairs and Health must ensure that there are sufficient resources for the development work and that the modelling work progresses rapidly.
- The legislation on assisting victims of human trafficking must be changed so that the connection between the criminal proceedings and assisting victims of human trafficking is removed.

According to the valid legislation, if a pre-trial investigation into or prosecution of a human trafficking offence does not proceed further, it constitutes grounds for removing the person from the Assistance System for Victims of Human Trafficking. The person may still have become a victim of human trafficking, and they may be in need for support due to becoming a victim. Victims of human trafficking must be able to receive assistance from the Assistance System for Victims of Human Trafficking regardless of the progress of the criminal proceedings.

Human trafficking is not the only phenomenon, in which a special model for meeting the victims' needs for support is justified. MARAC, or a Multi-Agency Risk Assessment Conference, is a tool for assessing the risk of serious intimate partner violence and assisting the victim. MARAC gathers the authorities and organisations operating in the area together and coordinates the support provided to the victim. The goal of the national Barnahus project is to guarantee children a multidisciplinary,

child-oriented, simple investigative process of violent offences that operates without delay and to ensure that the children and their families have sufficient support and care. The Seri Support Centers provide low threshold services for those who have experienced sexual violence, such as trauma support and psychological guidance. It would be important to ensure that the good practices discovered in these functions could be used in developing the assistance for victims of human trafficking.

### **2.2.3 Identifying victims of human trafficking is key to the realisation of rights**

The realisation of the rights of victims of human trafficking requires that human trafficking is identified. The first report to the Parliament by the National Rapporteur on Trafficking in Human Beings in 2010 raised the issue that many parties could not identify victims of human trafficking, meaning that they were not able to refer the victims to assistance or take human trafficking into account in the different processes. The authorities that were highlighted in the report at that time, such as the Finnish Immigration Service, the police and occupational safety and health, have developed their operations over the years and taken responsibility for anti-trafficking work. Identifying human trafficking and referring victims to assistance has become a part of the authorities' activities.

Identifying victims of human trafficking is not a voluntary matter for Finland. Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings obliges states to ensure that the competent authorities can identify victims of human trafficking. In the explanatory report on the Convention, competent authorities include parties such as the police, occupational safety and health, the customs, immigration authorities and embassies. The preamble of the EU Human Trafficking Directive considers, for instance, lawyers, prosecutors and social, child and health care personnel as authorities who are likely to encounter victims or potential victims of human trafficking in their work. For this reason, they should receive sufficient training on how to identify victims and how to treat the victims.

Victims of human trafficking are entitled to the

support and assistance they need in order to recover. The National Referral Mechanism (NRM) for identifying and referral of victims of human trafficking is defined as a national framework based on cooperation in [the handbook](#) published by the Organisation for Security and Co-Operation in Europe (OSCE)<sup>54</sup>. This tool helps states to meet their obligations to protect the victims of human trafficking and promote their human rights. The NRM supports coordination between the public sector and other actors, such as non-governmental organisations and the private sector.

GRETA, the Group of Experts on Action against Trafficking in Human Beings, issued a recommendation for the establishment of an identification and referral system intended to make the referral of victims to assistance more effective in both of their evaluations on Finland. Creation of the system is recorded in the national action plan. The system has been prepared in cooperation with ODIHR, the OSCE Office for Democratic



### **Victims of human trafficking are entitled to the support and assistance they need in order to recover.**

Institutions and Human Rights. The development has also been dependent on the legislation project concerning assistance for victims of human trafficking in progress in the Ministry of Social Affairs and Health. In practice, the Assistance System for Victims of Human Trafficking in Finland and referring victims to the system has corresponded to the identification and referral system in question. However, some Finnish citizens or permanent residents of Finland who have become victims of human trafficking are never referred to the Assistance System; instead, they receive assistance from social and health care services. Establishing an identification and referral system would clarify the current situation.

The EU Anti-Trafficking Directive does not prescribe any specific identification method. Assisting victims of human trafficking has been implemented in different ways in different member states.

However, identification is an initial assumption for the implementation of the directive. The preamble states that victims of human trafficking must be able to exercise their rights effectively. If a person is not identified specifically as a victim of human trafficking, that person's rights will not be fully realised, either. The purpose of the identification and referral system is to create established operating methods to clarify and support the work of authorities, organisations and other parties that encounter victims of human trafficking. The identification and referral system is also intended to ensure that people identified as victims of human trafficking receive assistance instead of being left without the help and support they need.

Identification is necessary to address serious offences and ensure the integrity of people. Especially concerning child victims, identification and addressing exploitation must be intensified. According to [the report](#) by HEUNI, human trafficking that targets children and young people is mainly identified among asylum seekers<sup>55</sup>. Otherwise human trafficking may be identified as a phenomenon, but the victimisation of individual children and young people is not recognised, or if it is recognised, it does not lead to referral to the Assistance System for Victims of Human Trafficking or it does not become known otherwise. Criminal investigations into human trafficking targeting children and young people have been conducted in Finland, and harsh sentences have also been imposed due to it. According to the above report, however, the victims were mostly only referred to the Assistance System for Victims of Human Trafficking after they had become adults.

Along with referral to the Assistance System for Victims of Human Trafficking, referral to social and healthcare services must be developed as highlighted in a previous section. In order to clarify the division of duties between the Assistance System for Victims of Human Trafficking as well as the social and healthcare services, procedures must be drawn up for identifying victims of human trafficking and referring them to assistance. Children in particular must be taken into account in the procedures. The authorities that encounter potential victims of human trafficking must be provided information and training concerning referral to assistance.



## **2.2.4 The non-punishment principle and identifying victims of trafficking in human beings**

The non-punishment principle is an international legal principle. According to the principle, victims of trafficking in human beings must not be prosecuted or punished for their involvement in unlawful activities which they have been compelled to do as victims of trafficking in human beings. Provisions on the non-punishment of victims of trafficking in human beings are included in legislation such as the Council of Europe Convention on Action against Trafficking in Human Beings (Article 26) and the EU Directive on preventing and combating trafficking in human beings and protecting its victims (Article 8).

The principle of non-punishment protects victims of trafficking in human beings from criminal liability for acts they have been forced to do. The principle is necessary, because it can be used to combat exploitation related to criminal activity, ensure realisation of the rights of victims of human trafficking and promote the realisation of the criminal liability of perpetrators guilty of trafficking in human beings.

The principle of non-punishment is fundamentally connected to exploitation of criminal activities, which is an internationally recognised form of trafficking in human beings. According to the EU Directive on trafficking in human beings, this means the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. Unlawful acts that victims of trafficking in human beings are compelled to do may also be related to use of falsified documents or immigration or residence in the country. Furthermore, victims may be forced to participate in the trafficker's offence of trafficking in human beings, the victims of which they themselves also are. For example, a victim exploited for prostitution may be forced to recruit new victims to be exploited.

It is difficult to identify victims exploited for criminal activities because the victim cannot tell authorities about the exploitation they have been subjected to, without revealing their own participation in criminal activities. Therefore, victims find it hard to seek help from authorities and they

may not be willing to explain the full situation even after being caught for crimes they were compelled to commit. Furthermore, victims of trafficking in human beings may not consider themselves to be victims. Compelling a victim to commit crimes tightens the trafficker's control over the victim because the victims fear of criminal liability and the threat of getting caught increase the victim's dependence on the trafficker.

If exploitation of criminal activities is not identified, the victim of trafficking in human beings is treated as an offender instead of a victim. In such case, the trafficking in human beings does not become known to authorities and the perpetrator does not face criminal liability. In other words, the victim of a serious crime is punished instead of the actual perpetrator. The purpose of the non-punishment principle is to address this fundamental problem. The non-punishment principle is a form of incentive for victims to tell authorities about exploitation and a guarantee that this does not turn against the victim.

The Non-Discrimination Ombudsman draws up the report commissioned by the Ministry of Justice that reviews the current status of legislation, evaluates the practices of application of the non-punishment principle, and presents recommendations for developing the practices of the authorities and potentially also the legislation. The report will be completed in the spring of 2022.

## **2.3 Realisation of criminal liability**

### **2.3.1 The realisation of criminal liability requires that the whole chain of authorities must function**

Human trafficking is a financially profitable offence, and organised crime benefits from it. In the third report of the European Commission on the progress made in the fight against trafficking in human beings, trafficking has been described as providing enormous benefit for criminals while causing a massive cost to the society<sup>56</sup>. Only a small number of those guilty of human trafficking are caught and held criminally liable for the



offences they have perpetrated. Better realisation of criminal liability has been highlighted in recent years in the anti-trafficking work by Finland, the EU as well as the Organisation for Security and Co-operation in Europe (OSCE). For instance, OSCE's goal is to ensure that the member states multiply the number of charges brought for human trafficking.

Deputy Chancellor of Justice Mikko Puumalainen issued an important decision in December 2021 concerning the actions of the police and the prosecutors as well as investigation into human trafficking<sup>57</sup>. The Deputy Chancellor of Justice reviewed 50 pre-trial investigations by the police. The longest investigation took more than four years. In the decision, 12 reprimands for illegal and unjustified delay of the pre-trial investigation were issued to the police, and in 15 cases, attention was brought to the legislation related to carrying out a pre-trial investigation and the procedures during the pre-trial investigation. The decision stated that the disparity between the number of victims referred to support and that of the trafficking offences that ended up at court may be an indication of a serious structural problem in the realisation of criminal liability for human trafficking.

The decision revealed problems with criminal investigations that the Non-Discrimination Ombudsman has also brought up over the years. According to the Deputy Chancellor of Justice, the problem is serious and so far, the actions of the National Police Board have been insufficient. Even though the National Police Board states that it has increased training in combating trafficking offences, the reports submitted by police departments to the Deputy Chancellor of Justice show that there are clear deficiencies in the competence of the police. Reasons for the investigations dragging on and the inability to identify human trafficking during the pre-trial investigation included, for instance, lack of expertise and insufficient resources for investigation. As reasons for prolonged pre-trial investigations, the police departments referred to structural issues that must be taken care of within the police administration. The issues are related to matters such as interpretation, confidentiality of documents, cooperation between authorities and organisation of work. In the decision, the Deputy Chancellor of Justice notes

that simply ensuring competence is not enough; the police officer's or prosecutor's own attitude and motivation to carry out a high quality investigation into trafficking offences is also essential.

The Finnish Action Plan against Trafficking in Human Beings has highlighted obstacles against the realisation of criminal liability. The obstacles are largely the same ones that have been brought up in the decision of the Deputy Chancellor of Justice mentioned above. Cross-border crime makes it more difficult to bring the main perpetrators to justice. There is not enough effort to uncover such activities. It is felt that the penal provision on human trafficking is difficult to apply in practice, and the definitional elements may be hard to prove. Human trafficking may not always be taken into account at the start of the pre-trial investigation. If the police becomes aware of the exploitation only after the pre-trial investigation has ended, finding proof of the offence may be difficult. The Action Plan has aimed to improve the situation by including several measures on the activities of pre-trial investigation authorities that aim to achieve a data-driven approach, strengthen the steering and resources and form a situation picture. In addition, issues such as training needs are taken into account in addition to developing cooperation in pre-trial investigation both with prosecutors and in the form of multi-authority cooperation.

Victims of human trafficking or parties that assist them most often bring cases, in which there have been problems with the realisation of criminal liability, to the attention of the Non-Discrimination Ombudsman. Either no pre-trial investigation has been started into the trafficking offence or the pre-trial investigation took a long time, human trafficking or its victim was not identified, or the prosecutor found that there is not sufficient proof of the offence to bring charges. Especially with labour exploitation, it is problematic that if the criminal act does not proceed as human trafficking, it may not proceed further as another offence significant from the victim's perspective, either.

When the criminal procedure does not progress, this often means increasing difficulties for the victim. The person's removal from the Assistance System for Victims of Human Trafficking is evaluated, and the victim cannot receive a temporary residence permit based on a criminal inves-

tigation into human trafficking. For this reason, it is good to develop assistance to victims of human trafficking so that it is independent of the progress of criminal procedure. With the reform of the Aliens Act, victims of labour exploitation can receive a residence permit based on the exploitation they have experienced without the existence of a criminal procedure.

In the Action Plan against Trafficking in Human Beings, several concrete actions have been assigned to the pre-trial authorities and prosecutors. The Ministry of Justice is investigating the possibility of amending the Criminal Investigation Act, according to which investigative measures concerning potential victims of human trafficking should be assigned, whenever possible, to investigators and heads of investigation with special expertise in the task. This change is supported by the decision of the Deputy Chancellor of Justice, which revealed illegal negligence and practices by police departments. The Non-Discrimination Ombudsman also considers this a necessary change.

However, anti-trafficking work cannot be left on the responsibility of those who specialise in the task. Exploitation can also be identified during investigation of other offences, and in that case, it must be possible to assess whether the act could constitute human trafficking. For this reason, the police must continue to receive comprehensive training on how to identify human trafficking already at the start of the investigation.

### **2.3.2 Plenty of trafficking offences are uncovered, but the number of sentences remains low**

Most of human trafficking and related exploitation remains hidden. The authorities are only aware of a small part of the trafficking offences that have taken place in reality. In 2011–2015, pre-trial investigation authorities only became aware of approximately 25 trafficking offences per year on average. There has been an increase in the number of offences in the last five years, however. In 2016–2020, pre-trial investigation authorities discovered a bit over 80 trafficking offences per year on average. Most of the trafficking offences have consisted of offences that meet the basic definitional elements of human trafficking. In 2011–2020, roughly ten per cent of the cases involved

aggravated trafficking offences. In 2020, the police discovered a total of 111 trafficking offences, 98 of which met the basic definitional elements and 13 of which were aggravated.

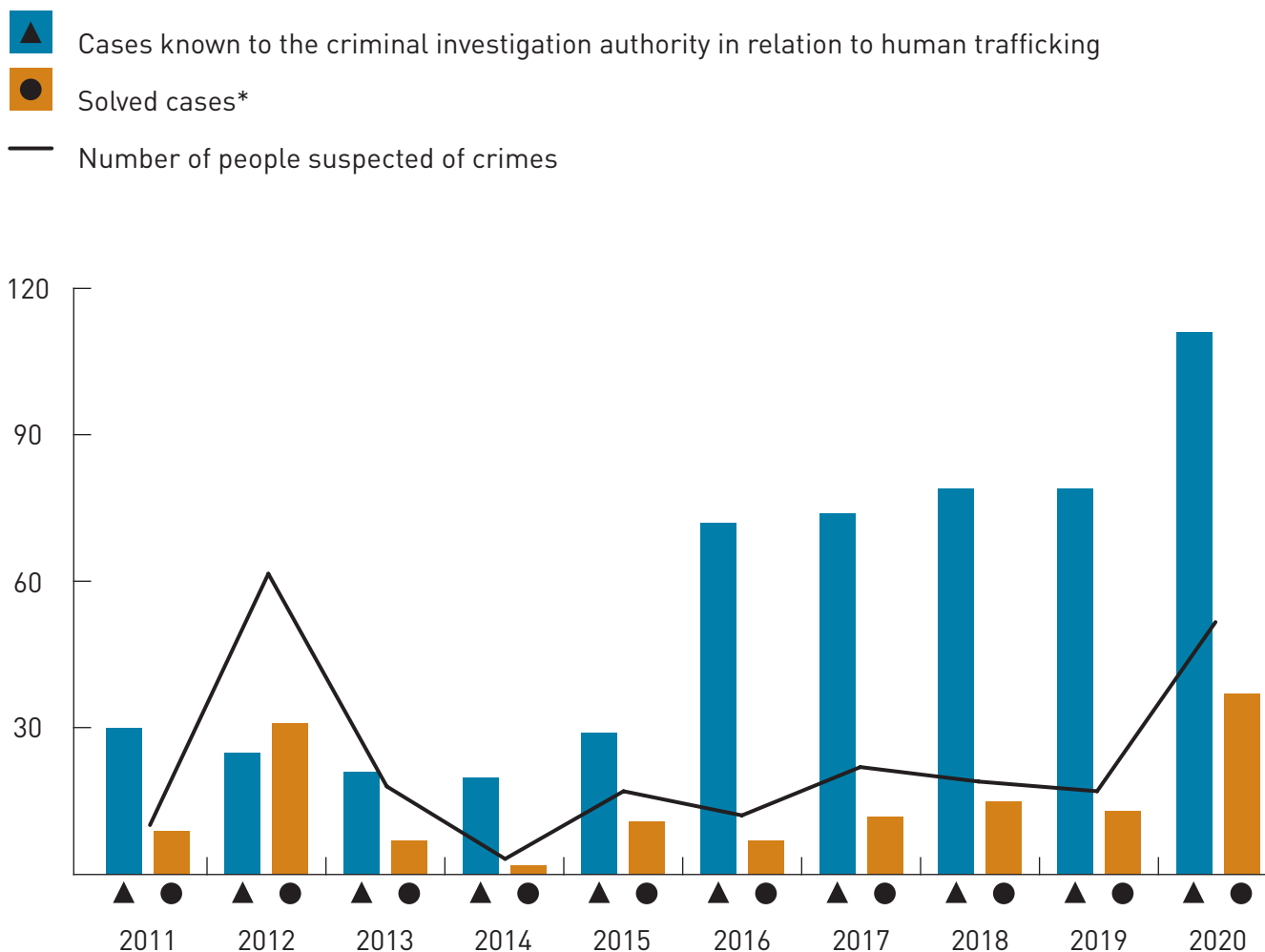
The pre-trial investigation authorities cannot solve all cases of human trafficking. Figure 1 shows the clear difference between the discovered and solved crimes. In 2011–2015, approximately one half of the suspected offences were solved. Within the last five years, the share of solved cases decreased to no more than 20 per cent. Cases of suspected human trafficking are extensive, and their criminal investigations may take a long time. For this reason, it is possible that some of the offences included in the statistics for 2016–2020 will be solved in the coming years. Some of the reports involve offences that took place completely abroad, of which there was not enough information available for the cases to be solved or for the investigation to be transferred to another EU country, for instance.

The police systematically reported the solved human trafficking cases to the prosecutor. Therefore, the number of trafficking offences reported to the prosecutor is the same as the solved cases. Annual statistics are no longer published on the consideration of charges by the prosecutor, but statistics are attached to the Action Plan against Trafficking in Human Beings, for instance. According to these statistics, the prosecutors make a considerable number of decisions to discontinue the pre-trial investigation concerning the trafficking offences they process.

A small share of the trafficking offences discovered by the pre-trial investigation authorities have led to charges being brought at a District Court. The number of trafficking offences processed at district courts has remained extremely low. In 2016–2020, only five charges on average were brought for trafficking offences as the main offence (Criminal Code 25:3-3a). On average, there were only three parties sentenced to a punishment each year.

In order to achieve more effective criminal liability, the Helsinki Police Department focused the investigation of trafficking offences into combating financial offences in 2020. A national unit specialising in the investigation of trafficking offences with better resources started working in

**Figure 1: Trafficking in human beings (Criminal Code 25:3–3a), crimes reported to and solved by the criminal investigation authority, and the persons suspected of the crime in 2011–2020 (N)**



Cases known to the criminal investigation authority in relation to human trafficking: 30 in 2011, 25 in 2012, 21 in 2013, 20 in 2014, 29 in 2015, 72 in 2016, 74 in 2017, 79 in 2018, 79 in 2019 and 111 in 2020. Solved cases: 9 in 2011, 31 in 2012, 7 in 2013, 2 in 2014, 11 in 2015, 7 in 2016, 12 in 2017, 15 in 2018, 13 in 2019 and 37 in 2020. Number of persons suspected of crimes: 10 in 2011, 62 in 2012, 18 in 2013, 3 in 2014, 17 in 2015, 12 in 2016, 22 in 2017, 19 in 2018, 17 in 2019 and 52 in 2020.

Source: Calculated from the figures of Statistics Finland

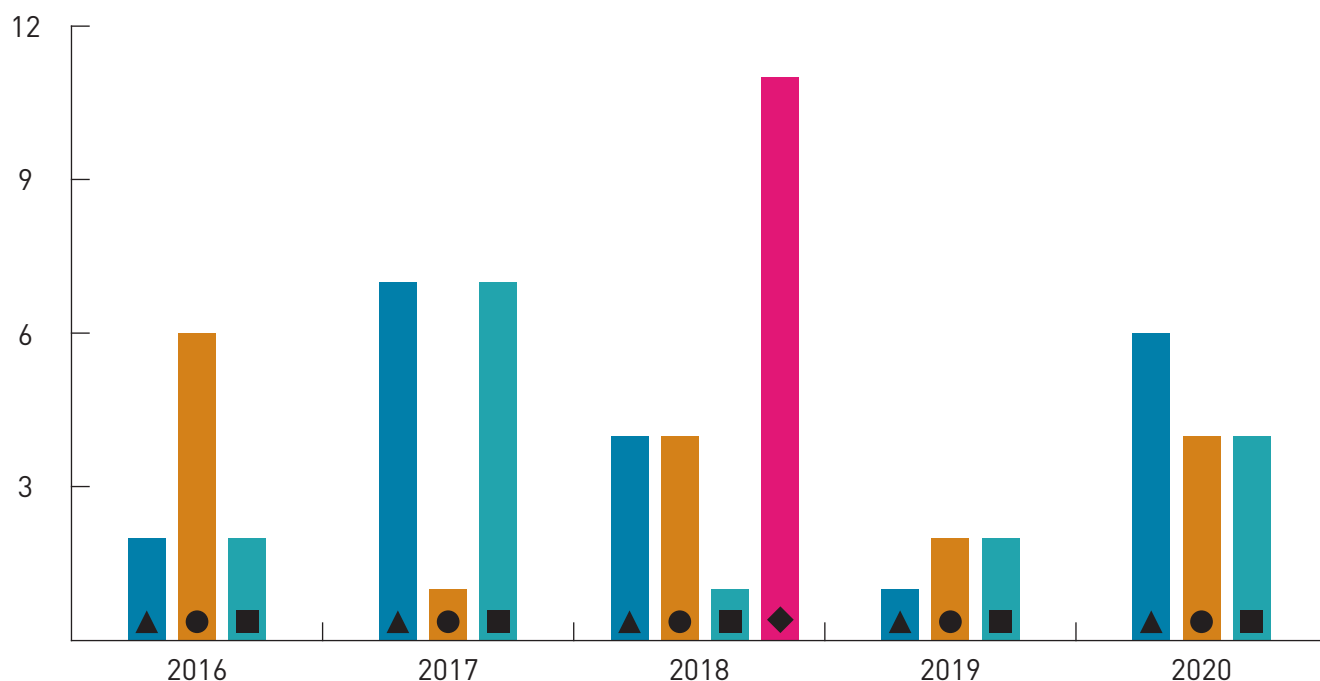
early 2021. The unit's objective is to work in close cooperation with the National Bureau of Investigation, the named anti-trafficking experts at police departments as well as other authorities and partners. The police departments are still responsible for uncovering and investigating local trafficking offences, while the special unit focuses on more extensive trafficking offences on the national level. The special unit can support police

departments in the investigations. To correspond with the investigative team of the police, a group of specialised prosecutors familiar with human trafficking has been established in the Prosecution District of Southern Finland.

The special unit has operated for less than a year, and therefore its results cannot be evaluated yet. Over the years, applying the definitional elements of human trafficking has proved to be chal-

**Figure 2: Human trafficking: District Court convictions (attributable convictions) by crime in 2016–2020**

- ▲ Pandering (CC 20:9) and aggravated pandering (CC 20:9a)
- Convictions of trafficking (CC 25:3) and gross trafficking (CC 25:3a)
- Convictions of extortion-like work discrimination (CC 47:3a)
- ◆ Convictions of abusing a victim of prostitution (CC 20:8)



The District Court convictions were in 2016–2020 as follows: Convictions of pimping and gross pimping: 2 in 2016, 7 in 2017, 4 in 2018, 1 in 2019 and 6 in 2020. Convictions of trafficking and gross trafficking: 6 in 2016, 1 in 2017, 4 in 2018, 2 in 2019 and 4 in 2020. Convictions of extortion-like work discrimination: 2 in 2016, 7 in 2017, 1 in 2018, 2 in 2019 and 4 in 2020. Convictions of abusing a victim of sex trade: 0 in 2016, 0 in 2017, 11 in 2018, 0 in 2019 and 0 in 2020.

Source: Calculated from the figures of Statistics Finland

lenging, which is why specialisation is needed. The operation of the special unit specialising in human trafficking should be established so that the expertise and operating methods can be developed on a long-term basis. In addition, special unit's offences related to exploitation should be seen as a part of the work of all police departments in addition to the investigative team. These offences must be taken seriously and investigated appropriately, and every police department must have expertise in issues such as the effect of trauma on victims and how to interview victims sensitively. The National Police Board and police departments must

implement the measures assigned to them in the decision of the Deputy Chancellor of Justice.

Criminal liability must be realised more effectively by using the following methods, among others. Whenever possible, investigations into human trafficking must be assigned to investigators and investigators in charge who are familiar with this task. The police must continue to receive training on how to identify human trafficking already at the start of the investigation. The resources of the special unit specialising in human trafficking must be established permanently.

### 2.3.3 Human trafficking must be addressed by reducing the demand

In the spring of 2021, the European Commission published a new Strategy on Combatting Trafficking in Human Beings for 2021–2025<sup>58</sup>. Human trafficking is a difficult phenomenon that hides itself, and addressing it requires a variety of methods – preventing human trafficking, protecting the victims and an effective criminal and legal procedure. The implementation of the Anti-trafficking Directive has not been sufficiently effective. Human trafficking is still a significant human rights problem in the EU. Thousands of people, especially women and children, are targeted by it every year, and the financial benefit gained by criminals is massive. The number of sentences on the EU level is very low compared to the estimated amount of human trafficking.

According to the strategy, the Commission aims to intensify the support for implementing the Anti-trafficking Directive in the member states and assess the functionality of the Directive. As one key part of the changes to the directive, the strategy highlights measures aiming to reduce the demand. According to the Anti-trafficking Directive, member states must consider the criminalisation of using the services of a victim of human trafficking:

In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2. (Directive on preventing and combating trafficking in human beings and protecting its victims, 2011/36/EU, Article 18(4))

In the strategy, the Commission raises the possibility of amending the Directive so that instead of the individual consideration of the Member States, they should criminalise the use of services when the person providing them is a victim of human trafficking. In practice, the goal would be to address trafficking in human beings related to sexual exploitation more effectively. According to the

Occasional Paper published by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, demand must be discouraged in order to combat human trafficking as a phenomenon effectively<sup>59</sup>.

In Finland, using the services of a victim of human trafficking is criminalised as abuse of a victim of sexual trade. With the changes in legislation in 2015, purchasing sex from a victim of pandering or human trafficking also became punishable as an act of negligence, meaning due to carelessness. Previously, the act was punishable if the buyer of sex knew that the person was a victim of pandering or human trafficking. Now it is enough if the buyer had reason to suspect that this was the case.

The aim of the change in legislation was to provide better protection for victims of pandering and human trafficking. The provision of the Criminal code on abuse of a victim of sexual trade is applied only rarely, however. In the worst cases, individual victims of human trafficking have been exploited hundreds of times. Still, the criminal investigation focuses on the main perpetrator. The criminal liability of persons who have purchased sex from a victim of pandering or human trafficking is realised only in extremely rare cases. In the last few years, the annual number of reports of an offence on the issue has been less than 10. The criminal case advances to the prosecutor even more rarely – in 2015, a total of four such cases reached the prosecutor, seven in 2017, and none in 2016, 2017, 2019 and 2020. With regard to sentences, 2018 is an exceptional year in the statistics, because then 11 individuals were sentenced at court for abuse of a victim of sexual trade. The Non-Discrimination Ombudsman finds it concerning that investigations into abuse of a victim of sexual trade are not started due to a lack of resources, for example. In fact, it can be stated that other people who exploit victims of human trafficking or pandering can operate without the fear of getting caught and punished.

Financial profit at the cost of the victims of exploitation are the root cause of human trafficking in the form of sexual exploitation. A topic rarely raised in discussion is that with their actions, the perpetrators of human trafficking meet a demand created by those who purchase sex, mostly

men. This is why discouraging demand must be strengthened in anti-trafficking work, and the exploiters must be held criminally liable in addition to the main perpetrators. The abuse of a victim of sexual trade has been criminalised. That is not enough, however, if the exploitation is not investigated, no charges are brought and the liability of the buyers of sex who are guilty of exploitation is not realised as a result.

The demand for human trafficking must be addressed much more effectively than it currently is by ensuring that the individuals who exploit the victims of human trafficking or pandering will be held criminally liable. Currently, exploiters are only held responsible in extremely rare cases in practice.

## **2.4 Addressing labour exploitation requires multidisciplinary cooperation**

### **2.4.1 Exploitation in working life often remains hidden**

Human trafficking is hidden crime masked by the structures of legal activity. Anti-trafficking actors share the view that much more labour exploitation takes place than what is uncovered. Fields at risk include the restaurant, construction and cleaning sectors, agricultural and seasonal work, the field of beauty care, and car washes. Foreign workers in particular become targets of exploitation. The scale of exploitation is wide, ranging from unpaid overtime to human trafficking.

In Finland, labour exploitation has been identified well as human trafficking compared to the European level. Several studies on the subject have also been published in recent years, such as the reports by the European Institute for Crime Prevention and Control (HEUNI) on the organisation of employment services for victims of human trafficking with a foreign background, methods of combating the exploitation of foreign labour in different countries and a business model of labour exploitation. Sanctions for issues such as work dis-

crimination are low in comparison to the financial benefit gained. The differences between the consequences of human trafficking and extortionate work discrimination are large. Research information should be used to address labour exploitation. Studies bring up the need to investigate a reform of the Criminal Code, for instance, so that labour exploitation would be separately criminalised.

There is an ongoing project at the Police University College used to develop multi-authority operation. The project draws up operating models for targeted monitoring of the most central industries that require labour. The authorities have already carried out monitoring raids in cooperation on ordinary and berry farms, for instance. Joint monitoring makes it possible to form a more comprehensive picture of the situation thanks to different competencies. For instance, when monitoring housing conditions, the presence of environmental health inspectors as well as fire and building control authorities can make visible the housing conditions of victims of human trafficking, which may be even hazardous to their health and safety.

Intensifying the monitoring and investigations alone is not enough to root out labour exploitation. If labour exploitation is not identified as human trafficking, or if the definitional elements of human trafficking are not met, there is a large difference between it and its related crimes and their perishability. It is important that sentences have been imposed for human trafficking in the form of labour exploitation, but this only happens rarely. According to the study by the tax authority, for instance, as well as the studies by HEUNI, sentences imposed for extortionate work discrimination mainly consist of day fines, which have typically been small.

“[Labour] exploitation is often systematic and professional. The risk of getting caught is low, because the activity may not be visible to the outside and the victim is a foreigner, who may accept the treatment or at least submit to it. The existence of the phenomenon and the scope of the group of perpetrators is partially explained by the fact that exploitation enables its perpetrators to do very profitable business. In the most highly aggravated cases, serious



financial offences have also been committed.” (Government Proposal on amending the Aliens Act, HE 253/2020 vp)

#### **2.4.2 The society is responsible for safeguarding the rights of victims**

Along with ensuring more effective criminal liability, the rights of the victims of exploitation must be strengthened. If the criminal procedure does not progress, exploited persons in Finland may suffer heavy consequences due to a situation that they could not influence themselves. The aim has been to respond to the fear of losing one’s job and the resulting loss of income, right of residence and potentially also the right of the family’s residence with a new residence permit for those who have experienced labour exploitation. The goal of the amendment of the Aliens Act that entered into force in the autumn of 2021 is to support the victims of exploitation even in situations, in which the criminal investigation does not progress. According to the new section 54b, a foreigner is granted an extended permit for finding for a new job or entrepreneurial activities, if there is a justified reason to suspect that their employer has significantly neglected their responsibilities as the person’s employer or otherwise exploited the person. The residence permit is granted continuously for one year, and granting the permit does not require a secure income.

The goals emphasised in the Government Proposal on the residence permit of a victim of labour exploitation (HE 253/2020 vp) include the victim’s legal status and basic and human rights, as well as the victim’s possibilities of breaking free from the exploitation. The grounds take the actual conditions of a victim of labour exploitation into account. Granting the permit does not require things like a criminal investigation or documentary evidence on the matter.

The application procedure of the new regulation must be monitored. The goal during the preparation of the legislation was to respond to a concrete problem in a way that would protect people in a vulnerable position and enable them to break free from labour exploitation. So that the goals of the act could be realised, victims of labour exploitation need to be aware of the possibility of receiving a residence per-

mit, however. It is also important that this reform is taken into account in connection with any changes to the residence permit of a victim of human trafficking. The starting point of residence permits granted to victims of exploitation must be safeguarding the person’s situation and strengthening their rights. Human trafficking victims’ residence permit practices are discussed in Chapter 2.5.

The society must support victims of human traf-



#### **The society must support victims of human trafficking after they have become free from exploitation and enable their recovery.**

ficking after they have become free from exploitation and enable their recovery. After leaving the exploitative situation and looking for a new job, victims of labour exploitation or human trafficking may face structural obstacles and problems. Issues affecting the realisation of the rights of an individual include, for instance, being admitted to integration services and receiving unemployment benefits after the exploitative situation is over. Receiving unpaid wages should be possible in reality without a legal procedure, in which a person cannot participate in practice from abroad, for instance. If addressing labour exploitation is not possible or if it does result in any consequences to the perpetrator, especially after the mistreated employee leaves the country, the society sends the wrong message about exploitation.

Labour exploitation must be addressed comprehensively. Research information on the topic does exist, and the authorities must take strategic measures based on it in order to root out the phenomenon and safeguard the rights of the victims. For instance, a working group on the prevention of exploitation of foreign labour operates in the Ministry of Economic Affairs and Employment. The Ministry has already started to implement several measures to address labour exploitation. The Ministry of Social Affairs and Health also plays an important role, because labour exploitation of foreigners is an occupational safety and health issue. Together, the

ministries mentioned above aim to find solutions to the malfeasance related to the housing conditions of foreign workers. Addressing exploitation requires cross-administrative measures and long-term development and cooperation, which means that the work must continue after the terms of the working groups currently in progress have ended.

The society must make sure that the exploitation of foreign workers is not worth it. The work of the ministries to combat the exploitation of foreign workers must continue.

## 2.5 Residence permit practices related to victims of human trafficking

### 2.5.1 Ombudsman's report on the residence permits of victims of human trafficking

In 2021, the Non-Discrimination Ombudsman carried out a study of the residence permit practices concerning victims of human trafficking, funded partially by the Ministry of the Interior and the Ministry of Economic Affairs and Employment<sup>64</sup>. Behind the study was a previous report of the Non-Discrimination Ombudsman, based on which the Parliament required the Government to determine if there was any need for legislative changes related to the grounds of residence permits for victims of human trafficking (EK 45/2018 vp).

The study looked at the types of cases in which victims of trafficking in human beings were identified, and how the Aliens Act was applied in processing their residence permit applications. The main focus was on studying the application of the residence permit for victims of human trafficking (section 52a) and the residence permit granted on individual compassionate grounds (section 52) and how the line was drawn between the sections of law. A key aspect was to investigate how the vulnerability of victims of trafficking in human beings was assessed and which factors were deemed significant in the assessment of vulnerability.

The research material consisted of decisions made by the Finnish Immigration Service in 2018–2020 in cases that involved indications of possible

victims of trafficking in human beings. The decisions applied not only the section of the Aliens Act concerning the residence permit granted to victims of human trafficking, but also the provisions on international protection and individual compassionate grounds. The material in the register, selected from a period of three years, included a total of 461 decisions, 145 of which were selected for closer inspection.

International obligations have emphasised assisting and protecting victims of human trafficking. The Council of Europe Convention pays attention to the right of residence of victims of human trafficking that come from third countries. In 2004, the Residence Permit Directive was issued on the topic in the European Union; the Directive provides for granting a residence permit to a victim of human trafficking either due to the victim's personal situation or the criminal procedure (2004/81/EC). In 2006, a special provision (section 52a) was included in the Aliens Act concerning a temporary or continuous residence permit granted for victims of human trafficking. A temporary residence permit may be issued if the residence of the victim of trafficking in human beings is justified on account of criminal proceedings. A residence permit may be issued on a continuous basis if the victim of trafficking in human beings is in a particularly vulnerable position. Victims of human trafficking may also receive international protection (sections 87–88) or they may receive a continuous residence permit on individual compassionate grounds (section 52). A residence permit granted on individual compassionate grounds can be received due to vulnerable position, for instance. To receive a continuous residence permit for a victim of human trafficking, a *particularly* vulnerable position is required.

According to section 52a of the Aliens Act (21.7.2006/619), a victim of trafficking in human beings staying in Finland is issued with a temporary residence permit if:

- 1) the residence of the victim of trafficking in human beings in Finland is justified on account of a criminal investigation or court proceedings concerning trafficking in human beings;

- 2) the victim of trafficking in human beings is prepared to cooperate with the authorities in apprehending those suspected of trafficking in human beings; and
- 3) the victim of trafficking in human beings no longer has any ties with those suspected of trafficking in human beings.

If the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements laid down in subsection 1(1–2) are met.

### **The special provision of the Aliens Act on human trafficking was applied only rarely**

The Finnish Immigration Service has granted very few first residence permits for victims of human trafficking based on the special provision concerning them (section 52a). According to the register data compiled by the Finnish Immigration Service, approximately ten residence permit per year were granted to victims of human trafficking during 2018–2020. Less than half of them were granted based on an application for a first residence permit, and the rest were extended permits for a previously granted residence permit for a victim of human trafficking. During the same period, however, a bit over 200 new clients per year were admitted to the Assistance System for Victims of Human Trafficking, most of whom were asylum seekers. There was a considerable difference between the number of clients admitted to the Assistance System and the number of those who received a residence permit based on the special provision concerning human trafficking.

The Finnish Immigration Service has processed more applications related to victims of human trafficking than what the statistics might indicate, because they can also be granted international protection or a residence permit based on other grounds stated in the Aliens Act. It is known that such decisions have been made, but their exact number in each year is not included in the statistics. Victims of human trafficking are not shown as a separate group in the statistics published by the Finnish Immigration Service. Not all victims of human trafficking are identified during the asylum process, either.

The register data compiled by the Finnish Immigration Service on the years 2018–2020 included a total of 461 decisions that contained indications of potential victims of human trafficking. Approximately 60 percent of the applicants included in the research material were female and approximately 40 percent were male. Approximately 67 percent of the applicants received a positive decision, whereas approximately 33 percent received a negative decision. The average age of both applicants who received a positive and applicants who received a negative decision was 26 years, and the average age of women was slightly higher than the average age of men. The register does not include information on whether the decision was based on human trafficking or if the Finnish Immigration Service considered the person a victim of human trafficking. With a closer inspection of the decisions, it was possible to investigate the significance of human trafficking in the decision-making process concerning residence permits in more detail.

The most common grounds for issuing a positive decision was on the basis of international protection (sections 87 – 88) but trafficking in human beings was not the primary reason for such decisions. Issuing of residence permits on individual compassionate grounds (section 52) was the second most common grounds for a positive decision. In these cases, the decisions often commented on trafficking in human beings, which had a bearing on issuing a residence permit because the victim was deemed to be in a vulnerable position. The third most common grounds for issuing a residence permit to a victim of trafficking in human beings was on the basis of section 52a of the Aliens Act as either a temporary or a continuous residence permit.

Most of the cases that were not investigated involved the application of the Dublin Regulation for determining the Member State responsible for examining an asylum application. According to the Dublin Regulation, the Member State responsible for examining an asylum application is primarily the one, in which the applicant first arrived. In addition, applications were not investigated because the applicant had received protection in another Member State. The cases that were dropped mainly involved situations, in which the person left the country during the processing of an application for international protection.

Type of decision	N	%
Positive	265	57,5
- international protection	(175)*	(38,0)
- individual compassionate grounds	(61)	(13,2)
- victim of human trafficking	(29)	(6,3)
Negative	128	27,8
Not investigated	64	13,9
Dropped	4	0,9
In total	461	100

The Finnish Immigration Service's decisions in cases indicating human trafficking 2018–2020, itemised by ruling type: 265 positive decisions, i.e. 57.5% of all decisions. Of these decisions, 175 (38%) were decisions made on the basis of international protection, 61 (13.2%) were decisions made on the basis of a human reason, and 29 (6.3%) were decisions made on the basis of becoming a victim of human trafficking. Of all decisions, 128 (27.8%) were negative, 64 (13.9%) were left uninvestigated and 4 (0.9%) expired. There were 461 decisions in total.

\*Note on the table: the figures in brackets show the distribution of positive decisions. The percentages concerning them are calculated based on the total data.

Source: Data selected by the Finnish Immigration Service.

### The threshold for interpreting the particularly vulnerable position of a victim of human trafficking is high

The interpretation practice of the Finnish Immigration Service with regard to victims in a particularly vulnerable position proved to be very strict. Simply due to the small number of cases, it can be said that the provision of section 52a of the Aliens Act on granting a continuous residence permit for victims of human trafficking in a particularly vulnerable position has remained practically a dead letter. The decisions usually stated that the victim was not in a particularly vulnerable position. The Non-Discrimination Ombudsman points out that the threshold of interpreting that a victim of human trafficking is in a particularly vulnerable position has been set very high.

Nearly all cases of human trafficking described in the decisions concerned forced labour, sexual exploitation or forced marriage. In most cases, the exploitation did not take place in Finland. The duration of the exploitation varied, but particularly some of the women had been subjected to long term sexual violence. The decisions clearly indicate accumulation of trafficking in human beings, meaning that many victims have been repeatedly exploited in different stages of their lives. In

some cases, the exploitation started in the victim's childhood and continued in different forms through adulthood.

The study shows that assessment of vulnerability of victims of trafficking in human beings was diverse but varied significantly. Assessment of vulnerability involved assessing the nature, characteristics and consequences of the abuse suffered by the applicant. The applicant's attributes, the information they had obtained, their skills and their course of life were also given significance in the assessment of vulnerability. Vulnerability was linked to the applicant's possibilities for ensuring their means of support and health and avoiding becoming a victim after returning to their home country. The society's expected attitude toward the person returning to their home country, the support provided by the person's family and relatives in their home country and the opportunities for receiving support, help and protection from different operators in the home country also had a bearing on the assessment.

Assessment of vulnerability was found to be case-specific consideration where some factors speak in favour of vulnerability and some factors against it. In most cases, there were several indications of vulnerability present. According to the

study, the decisions in which the victim of human trafficking was considered to be in a particularly vulnerable position were especially rare. The provision according to section 52 of the Aliens Act played an important role for vulnerable victims of human trafficking; it made it possible to grant a residence permit on individual compassionate grounds. The assessment of vulnerability was not consistent between sections 52a and 52, however, and neither was it uniform; instead, in some very similar cases, some decisions were positive while another applicant received a negative decision.

The goal of the Aliens Act of 2006 of protecting the victims of human trafficking more effectively by giving them specific grounds for receiving a residence permit does not seem to have been realised well. The Non-Discrimination Ombudsman is concerned due to the fact that it has been very difficult for victims of trafficking in human beings to receive a continuous residence permit on the basis of their especially vulnerable position.

In October 2020, the Finnish Immigration Service issued instructions on how to process the case of a potential victim of human trafficking. In light of the study, the instructions have not made it possible to change the residence permit practice, which has become strict; as a result, the Non-Discrimination Ombudsman proposes a reform of the Aliens Act to the Parliament. The requirement of a particularly vulnerable position must be removed from section 52a of the Aliens Act so that it would be enough for the victim of human trafficking to be in a vulnerable position in order to receive a residence permit. In this way, the residence permit would cover a wider range of situations of victims of human trafficking, instead of only the most severe and extreme cases of exploitation.



**The threshold of interpreting that a victim of human trafficking is in a particularly vulnerable position has been set very high.**

### **The requirements for receiving a temporary residence permit should be made less strict**

The objective of the reform of the Aliens Act in 2006 was to improve the protection of victims of human trafficking; in addition, factors related to the prevention of trafficking offences and resolving crime were also brought up. This is about realising criminal liability in trafficking offences, meaning that by granting the victim of human trafficking the right of residence, the guilty parties can be held responsible for the offences they have committed. Making criminal liability more effective is linked to the statement in the Government Proposal (32/2006) on how the possibility of receiving the right of residence as a victim of human trafficking lowers the victims' threshold of filing reports of an offence concerning the exploitation they have experienced. The goal of a temporary residence permit is also to ensure that the victim's situation is settled during the criminal procedure and support the victim's recovery.

The study conducted by the Non-Discrimination Ombudsman showed that an ongoing pre-trial investigation often had a positive effect on receiving a residence permit. The negative decisions revealed that if the pre-trial investigation had been terminated or if the prosecutor had made a decision to discontinue the pre-trial investigation or not to prosecute, the applicant usually did not receive a residence permit as a victim of human trafficking any longer. It is fairly common in the investigation of trafficking offences, however, that suspicions of an offence may not even progress to consideration of charges, not to even mention a court of law.

In international discussions, it has been noted that from the victim's point of view, it is problematic if the residence permit is based on a requirement that the victim must cooperate with the criminal procedure. Victims of human trafficking cannot influence how effectively or with how much professional skill offences related to human trafficking are investigated or taken further in the criminal procedure. For these reasons, linking the residence permit to the victim's status in the criminal procedure is problematic.

The Non-Discrimination Ombudsman considers it necessary to start a discussion on how to



ensure that victims of human trafficking who have received a temporary permit could have an option to stay in Finland even after the criminal procedure. A more permanent right of residence than in the current regulation would be more successful in achieving the above-mentioned legislators' aim to lower the threshold of victims of human trafficking to file reports of an offence concerning the exploitation. The relationship between a new residence permit granted based on labour exploitation and the residence permit of a victim of human trafficking must also be assessed.

The victim of human trafficking has not always received the right to stay in Finland for the whole duration of the criminal proceedings. When examining the residence permit practice, a close inspection of the decisions reveals cases, in which the applicant was no longer needed for the pre-trial investigation after being interviewed according to the statement by the police, and the applicant received a negative decision for their residence permit application. Based on the decisions, it seemed like in these cases it may not have been known what will happen at the later stages of the criminal procedure. The application practice is problematic, because out of the actors in the criminal procedure, it only highlights the view of the police on the matter, while at the same time the victim's rights as the injured party in the offence are disregarded. The applicant's rights as the injured party in the offence are not realised, if after losing the residence permit, the applicant is no longer able to participate in the stages of the criminal procedure after the pre-trial investigation. In practice, the presence of the victim of human trafficking during the trial concerning the trafficking offence is also necessary for issues related to assessing the evidence and proving the offence.

The negative cases included ones, in which the name of the offence changed as the criminal procedure progressed and was no longer human trafficking but a related offence instead. Because the case did not involve a criminal investigation into human trafficking, the grounds for granting a residence permit based on the first subsection of section 52a of the Aliens Act no longer existed. The Non-Discrimination Ombudsman also considers the application practice problematic from the perspective that the name of the offence may

change back to human trafficking during the process at the court of law.

Changes in the Aliens Act are needed in order to improve the situation. The start of a pre-trial investigation would constitute sufficient grounds for receiving a temporary residence permit. At the same time, it would no longer be necessary to request a statement from the police on the necessity of the victim's presence and/or the cooperation of the victim with the authorities when considering the decision to grant the first temporary permit.

### **Summary and recommendations**

The study conducted by the Non-Discrimination Ombudsman looked at the types of cases in which victims of trafficking in human beings were identified, and how the Aliens Act was applied in processing their residence permit applications. Victims of human trafficking only rarely receive a continuous residence permit based on their particularly vulnerable position. The threshold for deeming that a victim of trafficking in human beings is in a particularly vulnerable position was remarkably high. The assessment of the vulnerability of a victim of human trafficking is not consistent with the provision in accordance with section 52 of the Aliens Act, either.

The requirement of the human trafficking victim's particularly vulnerable position must be removed from the provision in accordance with the second subsection of section 52a of the Aliens Act. In order to receive a continuous residence permit, it should be sufficient for the victim of human trafficking to be in a vulnerable position. The Finnish Immigration Service must ensure with instructions that the assessment of vulnerability would be conducted sufficiently carefully, and that the threshold for considering that a victim of human trafficking is in a vulnerable position is not raised too high.

The study also showed that only a few temporary residence permits had been granted to victims of human trafficking for reasons related to a criminal investigation into a trafficking offence. In cases, in which the presence of the victim of human trafficking during pre-trial investigation was not considered necessary, the victim was not granted a right of residence.

The right of victims of human trafficking to remain in Finland for the whole duration of the



criminal procedure must be ensured. The right of residence is necessary for the victims of human trafficking as the injured parties in the offence to be able to exercise their rights in the criminal procedure.

The provision on receiving a temporary residence permit in accordance with the first subsection of section 52a of the Aliens Act should be changed so that the start of a pre-trial investigation is sufficient grounds for receiving a permit. At the same time, when considering the decision to grant the first temporary permit, a statement should no longer be requested on the necessity of the victim's presence and/or the cooperation of the victim with the authorities.

The decision-making concerning a temporary residence permit must be accelerated. An application for a temporary residence permit should be processed within three months of submitting the application.

The Non-Discrimination Ombudsman recommends that the Parliament require the Government to prepare the changes to the Aliens Act based on research. The Aliens Act must be changed so that more victims of human trafficking meet the requirements for granting a continuous residence permit. The requirements for a temporary residence permit must be changed so that the rights of the victim of human trafficking as the injured party in the offence are safeguarded throughout the criminal procedure.



## **Anti-trafficking recommendations by the Non-Discrimination Ombudsman**

### **Assisting victims of human trafficking**

- A safe and supported housing service for victims of human trafficking must be provided for by law. Safe and supported housing services play an important role in stabilising the situation of the victim of human trafficking, enabling recovery and preventing further victimisation.
- In connection with the health and social services reform, well-functioning procedures must be built for wellbeing services counties in order to identify the victims of human trafficking and refer them to assistance. Referral mechanism must be developed in cooperation with different authorities, organisations that support the victims of human trafficking as well as the Assistance System for Victims of Human Trafficking. The Ministry of Social Affairs and Health must ensure that there are sufficient resources for the development work and that the work progresses rapidly.
- The legislation on assisting victims of human trafficking must be changed so that the connection between the criminal proceedings and assisting victims of human trafficking is removed. Victims of human trafficking must be able to receive assistance from the Assistance System for Victims of Human Trafficking regardless of the progress of the criminal proceedings.

### **Realisation of criminal liability**

- Criminal liability must be realised more effectively by using the following methods, among others. Whenever possible, investigations into human trafficking must be assigned to investigators and heads of investigation who are specialised with this task.

The police must continue to receive training on how to identify human trafficking already at the beginning of the investigation.

The resources of the investigative team specialising in human trafficking must be established permanently.

- The demand for human trafficking must be addressed much more effectively than it currently is by ensuring that the individuals who exploit the victims of human trafficking or pandering will be held criminally liable. Currently, exploiters are only held responsible in extremely rare cases in practice.
- The society must make sure that the exploitation of foreign workers is not worth it. The work of the ministries to combat the exploitation of foreign workers must continue.

### **Residence permits**

- The Aliens Act must be amended so that victims of human trafficking meet the conditions for granting a residence permit. In order to receive a continuous residence permit more frequently, it must be enough if the victim is in a vulnerable position instead of being in a particularly vulnerable position, as is currently required. The conditions for a temporary residence permit must be changed so that the rights of the victim of human trafficking as a plaintiff are secured during the entire criminal procedure.

### **Effective realisation of anti-trafficking work**

- The coordination of anti-trafficking work must be established with sufficient operating conditions. The key purpose of coordination is to prepare the next cross-administrative Action Plan for anti-trafficking work.

## 3. The Position and Rights of Foreign Nationals in Finland

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The duties of the Non-Discrimination Ombudsman include promoting the position and rights of foreigners and monitoring the enforcement of removal from the country.

According to the preliminary work on the Non-Discrimination Act, the Ombudsman must (among other things) monitor the conditions, position and rights of foreigners and promote the equality of foreigners. In addition, the Non-Discrimination Ombudsman plays a special role under the Aliens Act in complementing the legal protection of foreigners and monitoring the realisation of their rights. The Ombudsman has the right to be heard in individual cases involving an asylum seeker or the deportation of a foreigner. The Ombudsman also has an extensive right to receive information in matters related to foreigners. The Ombudsman has access to the register of foreign nationals and the right to be informed of all decisions made by the Finnish Immigration Service and the Administrative Courts under the Aliens Act.

As an external and independent authority, the Non-Discrimination Ombudsman monitors the removal from the country of foreign nationals being deported or refused entry. The monitoring obligation is based on the EU Directive on common standards and procedures in member states for returning third-country nationals; in Finland, the task has been assigned to the Non-Discrimination Ombudsman in the Aliens Act. The legislation grants the Non-discrimination Ombudsman the authority to monitor the enforcement of all removals from the country.

The goal of monitoring removal from the country is to develop the forced-return process so that the activity is humane and respects human rights. Central to the monitoring task of the Non-Discrimination Ombudsman is assessing the enforcement of forced returns from the point of view of fundamental and human rights.

This section discusses the observations made in the Ombudsman's work related to the rights of foreign nationals and during the monitoring of removals from the country, and presents recommendations for strengthening fundamental and human rights. In particular, the section discusses the realisation of the rights of the child, the protection of family life and undocumented people, in addition to the observations of monitors of removal from the country on taking the vulnerable position of people into account and the risks of violating the principle of non-refoulement.

### 3.1 The realisation of the rights of the child and the protection of family life require action

The Non-Discrimination Ombudsman actively monitors the realisation of the rights of foreigners in Finland, especially those in a vulnerable position. The Ombudsman has the right to information on all decisions made under the Aliens Act, and the Ombudsman is also contacted by interested parties, the people close to them as well as their support persons and attorneys, among others. In the role of monitor of removal from the country, the Ombudsman examines the situations and processes related to foreigners in a vulnerable position at the stage when the police start to prepare for the enforcement of removal from the country.

In the work to promote the rights of foreigners in recent years, the Ombudsman has observed and been informed about an increasing number of cases, in which the fundamental rights of a child are not realised. Typically, these are situations in which one of the parents is separated from their child by deporting them or by denying admittance.

In Finland, attention to the deficiencies in the realisation of the rights of the child has been drawn by recent research in addition to the Ombudsman's observations and the report on family reunification published by the Ombudsman in 2020. The thesis on jurisprudence and the concept of the best interests of the child suggested, among other things, that "in similar legal issues, different assumptions should not be made on matters such as whether it is in the best interests of a child to be with their parents or not, because this poses a risk of reaching a discriminatory conclusion"<sup>65</sup>. For example, the comparison by the European Court of Human Rights of decisions related to foreigners and ones related to child welfare showed that the same rights were not realised equally well in matters related to foreigners.

In 2021, Finland received the first condemnatory decision from the UN Committee on the Rights of the Child in a case, in which Finland decided to return a family with children to their home country. The Committee found that Finland had neglected its duty to ensure that a child will not face a real risk of serious harm, such as violence or harassment, in their home country. In the view of the Committee, Finland had also neglected its obligation to ensure that the priority of the best interests of the child was sufficiently protected when assessing the asylum case.

When speaking of the rights of foreigners, it must be kept in mind that fundamental rights also apply to people other than Finnish citizens. Even though the constitutional right to enter and remain in the country does not extend to foreigners, the protection of family life and the rights of the child, for instance, should apply to foreigners equally as much as Finns. This means that these rights must also be taken into account in cases, in which the right of foreigners to enter or remain in the country is assessed.

In the following sections, reasons for the deficiencies in the realisation of the rights of the child and the protection of family life in particular are discussed based on research and the observations of the Ombudsman. Finally, the Ombudsman presents recommendations on measures to ensure that the rights of children and foreigners will be realised more effectively in residence permit cases.

### **3.1.1 Deficiencies in taking the best interests of the child into account**

In practice, if one of the parents is not a Finnish citizen, there are significant obstacles in the way of parents and children having a family life in Finland. The Ombudsman's attention has been drawn especially to cases, in which the parent, who is a foreigner, of the family with children receives a negative decision in their residence permit case, even though they have been living a family life together in Finland for several years. In these kind of cases, it often seems like the parent being punished for their previous actions, which are considered reprehensible. For example, the parent acting contrary to the regulations of the Aliens Act years ago, such as giving incorrect personal data in a previous process or staying in the country without a right of residence, may have been considered more important than the right of a 4-year-old Finnish child to live together with their parent.

In the cases such as the one described above, the Ombudsman has drawn attention to, among other things, the fact that the best interests of the child are not applied in the manner required by the UN Convention on the Rights of the Child. According to the Convention, the States Parties must ensure that a child will not be separated from their parents against their will, except when there are legal grounds to do so and the best interests of the child require it. In addition, according to Article 3 of the Convention: "The best interests of the child must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies."

The priority of the best interests of the child means, among other things, that when making a decision, it must be first assessed what decision in the case in question would ensure the realisation of the best interests of the child. The decisions of the Finnish Immigration Service and the Administrative Courts do not show, however, that this requirement of Article 3 of the Convention on the Rights of the Child would be realised in residence permit cases. The most serious examples that have come to the knowledge of the Ombudsman have been about decisions on the residence permit of the parent of a child that do not assess the realisation of the best interests of the child at all,

and the child's own decision only states that the best interests of the child do not require granting a residence permit, because the child's custodian was not granted a residence permit, either.



### **The best interests of the child seem to be a criterion that is only very rarely given any real importance.**

The Aliens Act has a separate provision on the best interests of the child. According to section 6 of the Act, "in any decisions that concern a child under eighteen years of age, special attention shall be paid to the best interests of the child and to circumstances related to the child's development and health". In addition, according to section 146 of the Act, in the overall consideration of refusal of entry and deportation, "particular attention shall be paid to the best interests of the child and the protection of family life". Therefore, the provisions of the Aliens Act do not specifically refer to the best interests of the child being a primary consideration, and neither do they specify how the best interests of the child should be taken into account in the case in any more detail. This means that the definition of the best interests of the child in the Aliens Act is narrower than in the Child Welfare Act, for instance.

The deficiencies in the assessment and realisation of the best interests of the child also became evident in the report published by the Ombudsman in 2020 on family reunification decisions involving minors who had received international protection. The negative decisions of the Finnish Immigration Service reviewed in the report stated that the best interests of the child *do not require* granting a residence permit. The best interests of the child have also been often assessed in the same way in Administrative Court decisions. Nevertheless, in the preliminary work on the Aliens Act, one of the matters brought up with regard to the individual examination of the best interests of the child is that when making a decision, it is crucial that the decision-maker finds out what solution in this par-

ticular case is in the best interests of this specific child<sup>66</sup>. In practice, however, like in the decisions reviewed for the report, the best interests of the child are taken into account in a more limited way. In fact, in matters related to foreigners, the best interests of the child seem to be a criterion that is only very rarely given any real importance.

According to the government proposal on the Aliens Act, weight should be given to matters such as the assessment of a social worker on the realisation of the best interests of the child. In addition, according to the UN Committee on the Rights of the Child, the best interests of the child should be assessed by an authority independent of the immigration authorities. Based on the Ombudsman's observations and the material of the report, however, the statements of social workers or child welfare authorities do not appear to have any real significance when the decision-makers assess the best interests of the child. Unaccompanied minors are often considered to receive sufficient care or support in Finland from parties other than their parents. As for families who live in Finland, the child is considered to receive sufficient care and support from only one of their parents, meaning that the best interests of the child are not considered to require the whole family and both parents staying in Finland with the child.

#### **Recommendation:**

- The interest and rights of the child must be met in full, also in matters related to foreign nationals. The provisions of the Aliens Act concerning the rights of children must be developed so that they are compliant with the Convention on the Rights of the Child and the Child Welfare Act.

### **3.1.2 The provision on evasion of the provisions on entry restricts the rights of the child and the protection of family life**

The Non-Discrimination Ombudsman has accumulated a large number of observations on the effects of section 36(2) on granting a residence permit in particular. According to the provision, a residence permit may be refused “if there are reasonable grounds to suspect that the alien intends to evade the provisions on entry into or residence in the country”. The Ombudsman’s report on family reunification showed that under the provision, a significant number of even unaccompanied minors who received international protection were denied the right to a family life<sup>67</sup>.

Most of the cases that have come to the knowledge of the Ombudsman, in which the provision mentioned above has been applied and the residence permit refused, concern persons who came to Finland in 2015–2016 to apply for asylum. They have formed other ties to Finland either after a negative decision or during the asylum process, at which point they have applied for a residence permit based on work, studies or family ties, for instance.

The threshold for the application of section 36(2) of the Aliens Act appears to be low, and it is applied to an extremely wide variety of cases. In 2019, the Non-Discrimination Ombudsman issued a statement to the Supreme Administrative Court in a deportation case that involved a young Afghan man who had lived in Finland for ten years and had become well integrated. In the case, Finnish Immigration Service (Migri) and the Administrative Court held that the man should be deported because he had given the authorities incorrect information about his place of residence when applying for citizenship. The deportation decision was based on the regulation concerning the evasion of provisions on entry. The Ombudsman considered deporting a well-integrated foreign national due to incorrect information on their place of residence given 10 years ago to be unreasonable. In addition, the Ombudsman considered that it was important to refer the matter to the Supreme Administrative Court with regard to the application of the section on evading the provisions on entry. However, the Supreme Administrative Court did

not take up the case and rejected the application for leave to appeal.

The Ombudsman has also become aware of an increasing number of cases, in which the provision in question has been applied so that it restricts the right of Finnish children to family life and both of their parents. The Ombudsman has been contacted concerning several cases, in which one of the child’s parents was deported based on evasion of the provisions on entry, even though the parents in question had already been actively involved in the lives of their spouse and small child for several years. For instance, the parent was considered to have violated the provisions on residence in the country while staying in the country, because the parent had applied for a residence permit on several different grounds during several years. In addition, matters such as incorrect personal data given upon entry into the country may have been considered as activity indicating evasion of the provisions on entry into the country that prevents granting a permit to the father of a Finnish child six years after entering the country.

Even if the section concerning evasion of the provisions on entry was applied to the parent’s residence permit application in the ways described above, the issue cannot be separated from the best interests of the child and their right to family life. In practice, the cases mean that a child living in Finland is separated or is at risk of being separated from their parent, even if the parent was not guilty of criminal activities and did not pose a risk to public order or safety. In similar cases, many other EU countries, for instance, respect the child’s rights and their right to family life more than Finland.

Based on the report on family reunification, the Ombudsman issued a recommendation on changing the provision on the evasion of the provisions on entry. The provision should more clearly meet the requirements of precise and clearly defined legislation as well as protection of family life set in the Constitution of Finland. The report showed that in its current format, the provision may significantly restrict the rights of children who have been granted international protection. The Ombudsman’s observations have showed that the provision also restricts the right of Finnish children to live together with their parents in the



same way. The Ombudsman finds that the scope of application of the provision must be limited especially with regard to matters related to family ties, but also for other residence permit criteria.

In the summer of 2020 in two decisions included in its yearbook<sup>68</sup>, the Supreme Administrative Court found that the public interest related to immigration control can in certain cases be considered so weighty due to the applicant's violation of section 36(2) of the Aliens Act that the protection of family life must give way in the overall consideration. However, the decisions did not involve families with children; instead, they were about family life between spouses.

The above-mentioned decisions of the Supreme Administrative Court are based on a vote. For its part, this supports the Ombudsman's view that the section of law is imprecise and recommendation that the provision should be limited to ensure that the protection of family life in particular would be realised better. In addition, the Ombudsman finds it concerning to have observed that in recent years, the provision has increasingly often been also applied in other residence permit cases.

In the project initiated on 15 July 2020, the Ministry of the Interior investigated issues related to family reunification and evaluated potential needs for amending statutes based especially on the recommendations in the report published by the Non-Discrimination Ombudsman. However, the legislative proposal issued based on the project will not restrict the application of section 36(2) concerning anything other than unaccompanied minors who have been granted international protection. Taking the matters mentioned above into account, the Ombudsman finds that this is insufficient for safeguarding family life and the best interests of the child.

The Ombudsman finds that the current application procedure, in which children can be separated from their parents under section 36(2), is also problematic with regard to the Constitution of Finland. The relationship between the parent and the child is at the heart of family life, which means that it is also at the core of the fundamental and human right in question. The Ombudsman considers it questionable whether the restriction of the child's best interests and family life based

on the provision in question fulfils the criteria for restriction of fundamental rights. The end result of negative decisions, in which children are separated from their parent and prevented from living family life, is in conflict with the rights of the child in accordance with the Constitution of Finland and the UN Convention on the Rights of the Child.

### **Recommendation:**

- The scope of application of section 36.2 of the Aliens Act must be limited regarding both matters related to family ties and other grounds for residence permits. The application of the provision must not result in decisions that are not in the interest of the child, especially not to children being separated from their parent.



### **Ombudsman's statement to the Supreme Administrative Court**

In the autumn of 2021, the Ombudsman issued the Supreme Administrative Court a statement in a case involving the spouse of a Finn and the father and custodian of a small child. First, the man was considered to have evaded the provisions on entry by giving incorrect information about his identity when entering the country. The man was also considered to endanger public order and safety based on a sentence of a fine that he had received. After the Ombudsman had reviewed the details of the case, it became clear that based on the information available, there was no reason to assume that the man would endanger public order or safety. In the view of the Ombudsman, his activities did not prove the intent to evade the provisions on entry referred to in legislation, either. In any case, the right of Finnish children to live together with both of their parents, as well as the right of spouses to family life, should have been seen as weightier grounds in the consideration of deportation than the father's acts several years earlier that were considered reprehensible. Despite the Ombudsman's statement, the Supreme Administrative Court did not grant a leave to appeal in the case, and the father of the family was deported to his national state outside the EU.

## **3.2 Undocumented people – obstacles in the way of legalising their stay**

Some undocumented foreign nationals living in Finland have ended up in a situation, in which their chances of legalising their stay in Finland are poor. The situation has been affected especially by the changes in legislation that entered into force in 2015–2016; among other things, the residence permit granted for humanitarian reasons was removed from the legislation and the conditions for granting a temporary residence permit became stricter in situations, in which removal from the country by the authorities is not possible.

Significant changes in legislation also included a reduction in legal aid granted to asylum seekers and limiting the period of access to reception services. From the perspective of the applicants, the situation was also made more difficult by the increasingly stricter application of the law, which was proven by, among other things, the report drawn up by the Non-Discrimination Ombudsman together with the University of Turku<sup>69</sup>. In addition, several reports have stated that the legal protection of many of those who submitted their asylum application in 2015–2016 was not sufficiently realised.

The changes of legislation bound the asylum seekers' right to work, and the termination of reception services in certain situations, to the enforceability of the decision on denial of admittance or stay. This has resulted in many problems for both the asylum seekers and their employers, among others, because the provisions related to enforceability itself are occasionally ambiguous and unclear. For example, reception services and the right to work may end and start again during the same process. Problems related to the time of enforceability of a decision on denial of admittance or stay are discussed in more detail in section 3.5.

The practice has proven that correcting the deficiencies of the asylum process afterwards is extremely difficult. As a result of the change in legislation in the summer of 2019, the threshold for processing subsequent applications was also raised. This has made it even more difficult to identify the deficiencies in the first process when



assessing the subsequent applications. For example, the vulnerable position of the asylum seeker, such as their disability or being a victim of torture or human trafficking, may not have been identified during the first process, meaning that the applicant did not receive the necessary support for the process as a whole. Such people are still found and referred to assistance in the work with undocumented people by the municipality or the third sector.

This means that there is a large number of people in a vulnerable position among those who suffered from the problems in the asylum procedure in 2015–2016 in particular. It is also true that all parts of the asylum process still do not work like they should. In the worst case, people who came to Finland in 2015 are still waiting for their first legally valid decision on their asylum application.

In the autumn of 2021, the Finnish Immigration Service estimated that there are approximately 3000 people in Finland who applied for asylum in 2016 or earlier who are either still in the asylum process or undocumented and outside the scope of reception services. This section discusses the Ombudsman's observations on the obstacles against and problems with people legalising their stay that continue to weaken the position of those who came to Finland as asylum seekers in 2015–2016 in particular.

### **3.2.1 Obstacles in the way of legalising one's stay**

The legislation and the decision practice becoming more strict has led to an increasing number of people receiving a negative residence permit decision based on the application of valid legislation even when integration has started well and the person has completed their studies for a profession or found a job. Many of those who have received a negative decision have led a blameless life in Finland following the rules of the society, they speak good Finnish and they also have a family and friends here. In the cases that have come to the Ombudsman's knowledge, negative decisions have been issued, for example, to a young Afghan man who had lived in Finland for nearly ten years and studied and worked here, a young Somali woman who was completing her studies as a practical nurse, and an employed Iraqi man with

a Finnish spouse and small child.

The entry into and residence in Finland is provided for in the Aliens Act, which specifies most of the grounds for granting a residence permit to foreigners. For each type of residence permit – such as international protection, work, studies or family ties – the Act also provides for special conditions that must be met in the case.

Applicants must meet the conditions of a particular type of residence permit to be able to obtain a permit. This means that even if an applicant from Afghanistan, for instance, speaks Finnish, has family members and a job in Finland and is studying in Finland, they will not be granted a residence permit if the conditions of any of the individual permit types applicable to the case are not met.

#### **Even meeting the requirements of a residence permit type is not enough**

Moreover, it is not enough to meet the requirements of a particular type of residence permit, but the Aliens Act also imposes other conditions for obtaining a permit. Obtaining a residence permit usually requires the foreign national to have sufficient financial resources and a valid travel document. For example, the right of a child residing in Finland not to be separated from their parents may be left unfulfilled if the parents' income is deemed too low.

The travel document requirement may also be a practically insurmountable obstacle for an applicant already in Finland. Many countries do not have an embassy in Finland, and in addition, obtaining a travel document via an embassy without documentation to prove one's identity is often impossible. Moreover, obtaining a travel document from certain unstable countries may be difficult in general, and as for travel documents granted by the state of Somalia, they are not considered reliable in Finland. The current legal situation means, among other things, that Somalis cannot obtain a residence permit in Finland at all on the basis of employment or study, for example.

In addition, the Aliens Act contains a separate section on the general conditions for issuing a residence permit (section 36). According to the section of law, a residence permit may be refused, among other things, if the foreign national is con-

sidered a danger to public order or security. The section also includes the provision on evasion of provisions on entry into or residence in the country that has already been discussed above. Section 36 of the Aliens Act seems to mainly offer a way for those applying the law to prevent crime, but in practice, simply giving incorrect information on one's domicile when entering into the country may lead to a negative decision later. On the other hand, being sentenced to a fine for a criminal offence which has not endangered other people or been committed to seek financial gain can be considered an obstacle to granting a residence permit to a gainfully employed father of a family with children who has become fully integrated into Finland. Applying for international protection or a residence permit several times may also be considered to be to the detriment of the applicant and the residence permit refused, even if all conditions for receiving a work permit, for instance, would eventually be met.

### **3.2.2 The legislation should make it possible to take the applicant's situation better into account**

In the light of the examples presented above, it seems that the legislation leaves a great deal to the discretion of the party applying the law to refuse a residence permit, but it does not offer effective tools for applying the law in a way favourable to the applicant. Nevertheless, the Aliens Act contains a clause which seems to offer the opportunity to lower the barrier to legalising one's residence. Under section 52 of the Act, a residence permit can be granted on individual humanitarian grounds, "if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on a discretionary basis on other humanitarian grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position".

However, the threshold for granting a permit on this basis has risen extremely high in the application practice. Contrary to what could be assumed from the wording of the law, it is practically impossible to legalise one's residence on the basis of ties to Finland such as work, family ties and studies, for instance.

The Aliens Act also has several other provisions that could be amended in order to make it easier to ensure that a residence permit can be granted when it is reasonable from the perspective of both the individual and the society. For example, by changing the provisions on the requirement concerning a travel document and the granting of an alien's passport, it would be possible to ensure that receiving a residence permit for an employed person does not depend solely on the applicant's nationality (sections 35, 134). It would also make residence permit processes smoother and more humane if the Act would more precisely define what actions on the part of foreign nationals are actually considered reprehensible (section 36).

It benefits everyone if individuals staying in the country without the right of residence try to legalise their position by applying for a residence permit. However, when such a person submits an application to the police, they may at the same time violate section 185 of the Aliens Act, in which case the police may issue them a fine for the time they have spent in the country without the right of residence. In general, the attitude in the application of law is negative towards applicants' attempts to legalise their stay after a negative asylum or residence permit decision (section 36(2)).

When a person lives in the same country for several years, it is natural that they form ties to the country in question. In such situations, the law should first and foremost make it possible to legalise the stay, not create obstacles against it.



**It benefits everyone if individuals staying in the country without the right of residence try to legalise their position by applying for a residence permit.**

### **Recommendations:**

- Legislative measures should be taken to ensure that the Aliens Act would make it possible to take the applicant's overall situation better into account. Applicants' attempts to legalise their stay should not be considered a reprehensible activity.
- The provisions concerning asylum seekers' right to work must be simplified. Continuing work until deportation would secure the rights of both the applicant and employer.
- The stay of those who have arrived into Finland before 2017 and are here still without a residence permit should be legalised.

### **Ombudsman's statement to the Supreme Administrative Court**

In 2019, the Ombudsman issued a statement to the Supreme Administrative Court in a case involving an Afghan who had arrived in Finland as a minor and received a residence permit on individual humanitarian grounds. However, according to the Supreme Administrative Court, the requirements of a subsequent residence permit based on section 52 were not met even though the applicant had grown up in Finland and become very well integrated here. The applicant had not committed a crime, spoke Finnish, was studying for a profession and had no social network whatsoever in the applicant's home country of Afghanistan.

## **3.3 The role of the Ministry for Foreign Affairs and Finnish missions abroad in ensuring the realisation of fundamental and human rights**

In addition to the Finnish Immigration Service, the Ministry for Foreign Affairs and the Finnish missions abroad operating under it play an important role in matters related to immigration. Among other things, the missions are responsible for visa matters and arranging the identification related to the residence permit process. In some cases, the most important thing for people coming to Finland may be where and on what conditions they can visit Finnish missions abroad.

Usually, people immigrate into Finland from abroad to join their family. The operation of Finnish missions abroad and solutions related to the organisation of consular services play an important role especially in the realisation of the fundamental and human rights of people in a vulnerable position, such as the realisation of the rights of the child and the protection of family life.

### **3.3.1 The coronavirus pandemic brought long-standing matters to a head**

The role of Finnish missions abroad in the visa and residence permit process was highlighted in connection with the coronavirus pandemic. Due to the restrictions imposed by the Ministry for Foreign Affairs, visa applications were not processed, and it was not possible to visit missions for identification in order to submit a residence permit application. As a result, especially those families that had family members living in different countries when the pandemic started were placed in an unfavourable position. Many were prevented from enjoying real family life with their spouse or children for a very long time, and some are still waiting for an opportunity to visit a Finnish mission abroad so that they can at least start the processing of their application and reunite with their family.

The Constitution of Finland and the international obligations that bind Finland always require individual consideration when decisions that could



limit the protection of a person's family life are made. According to the Convention on the Rights of the Child, the best interests of the child must be a primary consideration in all actions by administrative authorities concerning children. Among other things, the Convention also obliges them to deal with the matters related to the child in a positive, humane and expeditious manner.

Even though the measures concerning Finnish missions abroad were understandable especially at the start of the pandemic, the Ombudsman considers the long-term restrictions very problematic with regard to the applicants' rights. The applicants have not even had the opportunity to initiate their application cases. The restrictions have been applied inflexibly, without taking matters such as the applicant's vulnerable position into account. Even in exceptional situations, the Ministry for Foreign Affairs and the Finnish missions abroad have the obligation to ensure that fundamental and human rights are realised and comply with the principle of legal interpretation that supports fundamental and human rights.

The situations related to the visa and residence permit processes that occurred during the pandemic are not completely new in all respects. From the perspective of applicants, there have been significant challenges in dealing with matters at the Finnish missions abroad even before the pandemic. The Ombudsman has highlighted these challenges in the statement on family reunification, for instance, already in 2018. These problems, among other issues, are discussed in more detail in the following section.

### **3.3.2 Deficiencies in safeguarding the rights of people in a vulnerable position**

There are many legal, administrative and practical problems in the way of obtaining a residence permit by submitting an application abroad, such as short application deadlines, strict certificate and document requirements, income requirements and obstacles related to the location of the country of origin and the competent Finnish missions abroad. In addition to the application fee, all of the issues mentioned above may also cause several thousands of euros in financial costs to the applicants. The problems are evident in several com-

plaints to the Ombudsman related to family reunification cases in particular.

In Finland, only an applicant residing abroad can submit a family reunification application. Even though the application can also be submitted electronically, the applicants must still visit a Finnish mission abroad in person for identification. In addition to the travel document, they must often also obtain and present various numbers of authenticated documents related to the family tie as well as their legal residence in the country, in which the mission is located. Besides the problems listed above, there are often also challenges in communication both with the missions and the company, to which the process management has in some cases been outsourced.

The cases of which the Ombudsman has been informed about represent a wide range of nationalities and geographical locations. In some cases, the sponsor has been a highly educated Finn, and in others a person who cannot read or write who has received international protection in Finland. Nevertheless, uncertainty about the different conditions and requirements unites those who deal with Finnish missions abroad, regardless of their background and opportunities of determining their rights and obligations.

How great a challenge the trip to the Finnish mission abroad poses in itself depends on the location of the country of origin. Finland has a relatively sparse network of missions, not all of which process visa and residence permit matters; in contrast, competent missions are provided for by a Government Decree on a country-specific basis. This means that many of those who apply for family reunification must travel great distances to visit a competent mission, often abroad and as far as thousands of kilometres away. As a result, simply reserving an appointment at a mission and travelling there may become an insurmountable obstacle to the process.

Reaching a competent mission alone is not enough, either; instead, according to section 60 of the Aliens Act, the residence permit applicant must reside legally in the country, in which the application is submitted. This often requires a visa that may sometimes be impossible to obtain. The situations are especially problematic for applicants in a vulnerable position. For example, the



family members of persons who have received international protection are often also in need of international protection themselves in relation to their home country. Travelling abroad in itself may be very risky for them, and they may have difficulties with obtaining travel documents, among other things. Obtaining a travel document and crossing the border of their home country may be dangerous especially for the family members of those who have received asylum in Finland. The Ministry for Foreign Affairs applies the “requirement of legal residence” absolutely, which may prevent the family members of a refugee from reaching safety and reuniting with their family member. This often affects the mother of a family and their children.

### **3.3.3 Obstacles in the realisation of rights**

The situation in Afghanistan, which had remained unstable for a long time, worsened rapidly in the summer of 2021 and Finland, among other countries, eventually evacuated people in distress from the country. The Non-Discrimination Ombudsman took a stand on taking the situation of family members living in Finland into account by sending a letter to Minister Ohisalo and Minister Haavisto<sup>70</sup>. The Afghanistan operation showed that when there is a shared aim, solutions can also be found for safeguarding the realisation of fundamental and human rights.

However, especially considering the background information that is now known, it must be kept in mind that Finland returned Afghans who had received a negative asylum decision to their nation state that same summer and refused to allow Afghans applying for family reunification to deal with matters at the Finnish mission in Kabul. No exceptions to this were made even in the spring or summer of 2020 when state borders were closed during the coronavirus pandemic; instead, the family members of Afghans who had received asylum in Finland were required to travel to India for identification even during the coronavirus.

By the end of 2021, the Ombudsman was again receiving a rapidly increasing number of complaints involving Afghans living in Finland and their families. In the autumn of 2021, Afghans were granted the opportunity to visit the mission in Tehran for family reunification matters with a special permit. In practice, the applicants had to have

both a visa and round trip tickets from Afghanistan to Iran in order to receive the special permit. However, getting a visa and reaching Iran was not enough. For example, according to a complaint received by the Ombudsman in the autumn of 2021, it was not possible to reserve an appointment at the mission for a family who were in Tehran, because English language skills were required from the applicants. According to the Visa Unit of the Ministry for Foreign Affairs, it was not possible to arrange interpretation in person in a health-safe manner. Meanwhile, according to the Ministry for Foreign Affairs, telephone interpretation could not be approved before a system suitable for the purpose was available.

In early December, the situation changed again when the Decree of the President of the Republic (UM/2021/203) made it possible for Afghans to deal with matters in Tehran without a special permit. After this, the complaints received by the Ombudsman involved many families who had first followed the special permit instructions of the Ministry for Foreign Affairs in the autumn of 2021. After receiving the visa to Iran that was required for a special permit, which in turn required the purchase of tickets, the families were notified in December that due to the new decree, the special permit procedure was terminated and that they would not be able to get a reservation at the Tehran mission before February 2022. The visas they had already obtained would not have been valid any longer at that time.

The complaints received by the Ombudsman stated that the applicants for family reunification were mainly women and children, many of whom were at risk of having to return to Afghanistan without having been able to even initiate their family reunification application process. The Ombudsman issued a statement in the matter, in which the Ombudsman found that Finnish authorities should immediately take measures in the manner required by section 5 of the Non-Discrimination Act and section 22 of the Constitution of Finland, among other things<sup>71</sup>. Because it is especially difficult for Afghans to be able to realise their right to family life due to Finnish administrative procedures, among other things, the Ombudsman found that the obligation to promote equality alone required that rapid measures should be taken to en-

sure the right to family life of the family members in Finland of those applicants who already were in Tehran.

According to the information the Ombudsman received later, some of the family members of people living in Finland who had reached Tehran were able to start the processing of their case quickly. Some, however, were forced to return to Afghanistan when their visas expired.

In their messages, the sponsors and applicants for family reunification also described how missions do not always even respond to the enquiries sent to them. In issues related to family reunification, the actions of the mission are important for the realisation of fundamental rights of people who are often in a vulnerable position, including children. The Ombudsman considers it absolutely crucial that embassies and missions improve operating methods in accordance with good governance and make sure that they meet the requirements set on official work of the authorities on giving advice.

The Ombudsman finds that, among other things, the Constitution of Finland, the Convention on the Rights of the Child and the Family Reunification Directive require solutions that make it possible for people with a refugee background and other persons in a vulnerable position to deal with matters at a mission they will be able to actually visit in reality.

#### **Recommendations:**

- Section 60 of the Aliens Act must be amended so that the section or its interpretation does not create hindrances to respect for family life and the fulfilment of the rights of a child.
- It must be investigated how the authorities' obligation to provide guidance in matters related to residence permits can be arranged in accordance with the obligations referred to in section 22 of the Constitution of Finland. Authorities must provide the necessary guidance on the process, regardless of whether applicants are located in Finland or abroad.

### **3.4 Basic and human rights at the core of monitoring the enforcement of removals from the country**

#### **3.4.1 Monitoring the enforcement of removals from the country**

According to the Aliens Act, one of the duties of the Non-Discrimination Ombudsman is to monitor the enforcement of removals from the country as an external and independent authority. The EU Directive on common standards and procedures in Member States for returning staying third-country nationals requires the Member States to provide for an effective forced-return monitoring system.

According to the Act, the Non-Discrimination Ombudsman has the authority to monitor the enforcement of all removals from the country. Based on the resources available, the Non-Discrimination Ombudsman has focused the monitoring especially on the return of persons in a particularly vulnerable position. In addition, returns to challenging destination countries such as Iraq and Somalia, in which the authorities limit or regulate the reception of their citizens and which have a poor security situation as well as many reported human rights violations, are selected as targets of monitoring. The aim is also to monitor returns with a heightened risk of having to use force.

The central task of the monitoring by the Non-Discrimination Ombudsman involves assessing the enforcement of forced returns from the point of view of fundamental and human rights. Fundamental rights determine the minimum level that ensures that each person is treated with respect for their human dignity. The European Committee for the Prevention of Torture (CPT) of the Council of Europe has stated that the risk of violations of fundamental and human rights is especially high during the enforcement of removal from the country. According to the Constitution of Finland, the public authorities must guarantee the observance of basic and human rights. This obligation also applies to the enforcement of removals from the country.

The operating environment of the monitoring of returns by the Non-Discrimination Ombudsman expanded when the Regulation on the European Border and Coast Guard Frontex entered into force. The Regulation requires Member States to nominate forced-return monitors to Frontex's pool of forced-return monitors. For this task, the Non-Discrimination Ombudsman received two new posts of return monitors in 2021. In the future, the monitors seconded to the European Border and Coast Guard Agency will also monitor returns made by the authorities of other Member States without any connection to the actions of the Finnish authorities. Another subsection was added to section 152b of the Aliens Act stating that the Non-Discrimination Ombudsman is responsible for participating in the pool of forced-return monitors in accordance with Article 51 of the Regulation on the European Border and Coast Guard. Monitoring activities related to this obligation have started during 2021 in the monitoring of the enforcement of removals from the country by the Office of the Non-Discrimination Ombudsman.



**The central task of the monitoring by the Non-Discrimination Ombudsman involves assessing the enforcement of forced returns from the point of view of fundamental and human rights.**

### **3.4.2 Observations of the Non-Discrimination Ombudsman on returns**

**Operating methods that respect fundamental rights have developed, but the rights of the persons being returned are not always realised**  
During 2014–2021, the Non-Discrimination Ombudsman monitored 212 operations of the enforcement of removal from the country. The number of cases monitored varied by year. There were 7 removals carried out during the first year in 2014, and the largest number of removals was carried

out in 2018, when the Office of the Non-Discrimination Ombudsman also had more personnel to carry out the monitoring.

The Non-Discrimination Ombudsman implemented a project funded by the Asylum, Migration and Integration Fund (AMIF), one of the European Union Home Affairs Funds; its [final report](#) describes the observations made during the monitoring in 2014–2019<sup>72</sup>. According to the Non-Discrimination Ombudsman's findings, many practices in return operations have improved in their consideration for fundamental rights. However, practices that respect fundamental rights and their further development still require constant attention and training.

Monitoring has revealed that practices vary and the rights of the persons being returned are not always realised. The fundamental rights issues that arise in connection with returns involve, for example, the use of force by the police, the identification of vulnerable persons being returned, interpreting, and legal protection. These are central fundamental rights, such as the protection of the physical integrity, life and health of the person being returned and ensuring that Finland does not violate the principle of non-refoulement.

The monitors document both good practices and subjects of complaint in their written feedback to the police. In the feedback in recent years, the Ombudsman has paid special attention to the use of force by the police, interpretation, identifying vulnerability, notifying the persons being returned about the time of travel, their communication opportunities, issues with the legal protection of the persons being returned and the transfer and flow of information between the authorities.

In their work, the monitors have identified many good practices that promote respect for fundamental and human rights in connection with returns. Some of these practices seem to largely consist of established procedures by the police, while in others the procedures by the police have varied based on the observations by the monitors. Good practices may prevent the resistance that is sometimes related to returns, which reduces the risk of use of force, and people who are reluctant to return may still feel that they have been treated with respect.

### 3.4.3 Strengthening the rights of persons in a vulnerable position being returned

The risk of a violation of fundamental rights is even greater for vulnerable persons being returned than others, because their vulnerable position may require special measures by the police that do not need to be considered with regard to other persons being returned. Situations, in which the vulnerability has not been identified in official proceedings during the stay in Finland are especially risky.

The government proposal on the monitoring of removals (HE 134/2013 vp) draws attention to the fact that the situations of vulnerable persons and aspects related to the humane implementation of returns should be taken into account in monitoring. During the monitoring, it has been observed that in some of the returns, the special needs of those in a vulnerable position are taken into account very well, while in others, the vulnerability has not even been identified. Due to the focus of activities set by the legislator, international regulations as well as the development needs that arose during the monitoring work, the Non-Discrimination Ombudsman investigated the identification of vulnerability in persons being returned and taking it into account in the preparation and enforcement of removal from the country in 2020–2021 in a project funded by the Asylum, Migration and Integration Fund (AMIF), one of the European Home Affairs Funds<sup>73</sup>.

#### Missing structures for identifying vulnerability and preparing returns

In the project and in the monitoring of removals from the country in general, it has been found that authorities do not have clear structures or instructions for preparing for the return of people in a vulnerable position. For example, the instructions of the National Police Board concerning the enforcement of removal from the country only discuss matters related to a vulnerable position very briefly. The instructions do not have a separate section on the returns of people in a vulnerable position or investigating and taking the special needs of these persons being returned into account, either. On the other hand, it has been discovered during the monitoring that in individual returns, both the po-

lice and the reception centres have practices that respect fundamental rights, in which the needs of people in a vulnerable position have been mapped out and taken into account carefully.

However, a concerning observation involved situations, in which the vulnerability of persons being returned was not identified, meaning that it was not possible to take their needs into account. In such cases, the risk of violation of fundamental rights becomes concrete.



#### Authorities do not have clear structures or instructions for preparing for the return of people in a vulnerable position.

##### Recommendation:

Structures, instructions and an operating models should be created for the police and the reception centers to safeguard the rights of persons in a vulnerable position being returned during the preparations for the return and the return itself. In addition, regular training on how to identify vulnerability and its importance during the preparations for the return and the return itself should be arranged for both the police and the staff of reception centres.

#### Both the persons being returned and reception centers must be notified about the return well in advance

According to the instructions of the National Police Board, the police must notify the director of the reception centre or their deputy about the enforcement of removal from the country and its time before the enforcement<sup>74</sup>. According to the same instructions, the persons being returned themselves must be notified about the time of removal from the country as soon as possible. If the police are aware of factors that could endanger the enforcement of the return, the head investiga-

tor can exceptionally decide not to announce the date of the return in advance.

However, in the project of the Ombudsman on monitoring removals from the country, it was found that the police do not always notify the reception centre about the time of the return. When a customer is picked up suddenly, the personnel of the reception centre do not have time to prepare the person being returned for the departure. In such situations, the need for support of the persons in a vulnerable position being returned is not taken into account at the reception centre. For example, there is no time to help the person being returned to orient themselves regarding the return or take care of their medication. During the project, it was found that the Assistance System for Victims of Human Trafficking does not always receive information on the time of the return of a victim admitted into the system, either.

The Non-Discrimination Ombudsman considers it important that the practices of the police are corrected so that they follow the instructions of the National Police Board. Attention must be paid to notifying the person being returned about the time of return as soon as possible. Reception centres, detention units and the Assistance System for Victims of Human Trafficking must always be notified well in advance about a future return – including when the person is provided private accommodation.

### **Best interests of the child and rights in connection with returns**

Children have the right to special protection due to their vulnerability. As asylum seekers, children are always in a vulnerable position. Children must be treated in accordance with their age and their special needs must be taken into account. The best interests of the child being a primary consideration has been guaranteed by Article 3(1) of the UN Convention on the Rights of the Child, as well as section 6(1) of the Aliens Act. The UN Convention on the Rights of the Child is valid in Finland on the legislative level. The Convention and its obligations concerning protection apply in full to all children, including children that are being removed from the country.

According to the government proposal on the Aliens Act, the best interests of the child are al-

ways unique and linked to the child's life situation at the time. In fact, the best interests of the child should be considered as a whole, taking account of the child's individual needs, wishes and opinions. In legal and administrative decisions, it is crucial that the authority finds out which solution or operating model is in the best interests of the child in question in that specific case. The government proposal also emphasises the position of social workers when determining the best interests of the child. In the instructions on removal from the country, the National Police Board has referred to the statement of the Committee on the Rights of the Child concerning the absolute necessity to assess the best interests of the child. According to the Committee, Article 3(1) of the Convention on the Rights of the Child does not leave any discretionary power to the Member States in the issue. According to the Committee, all administrative authorities, including the police, must primarily assess the best interests of the child in each decision, and their decisions and enforcement measures alike must be guided by the best interests of the child.



**Children are not responsible for dealing with the issues of adults, and children must not be placed in a situation, in which they settle matters between their parents and the authorities.**

Assessing and determining the best interests of the child is necessary in situations in which the child may be separated from their parents. Because being separated from their parents has a far-reaching impact on children, separating them from their parents should only be a last recourse when the child is at risk of immediate harm or the measure is otherwise unavoidable. Article 8 of the European Convention on Human Rights also protects the unity of the family. In fact, during the enforcement of removal from the country, it must be ensured that children are not separated from their



parents against the best interests of the child or without assessing the best interests of the child. The return trips should, in fact, be arranged so that the family can travel together as well as stay as close to each other on the means of transport as possible, unless it is against the best interests of the child and the family's wishes in an exceptional case.

Children are not responsible for dealing with the issues of adults, and children must not be placed in a situation, in which they settle matters between their parents and the authorities. In a few of the returns monitored during the project, it was found that in some situations, children acted as interpreters in discussions between the mother and the police during the return. The monitor brought attention to this in the feedback issued to the police. During the project, a prohibition against using a child as an interpreter when handling matters related to the family at any stage of removal from the country was added to the instructions of the National Police Board.

### **The rights and best interests of the child must be taken into account also when preparing for a return**

While preparing for a return, it may be discovered that other authorities or private individuals have become concerned about the safety or the growth and development of the child. A child welfare report may have been filed concerning the child after receiving a decision, or an investigation of matters related to the child may be in progress. Assessing the best interests of the child requires that the concerns related to children are investigated appropriately before enforcing the return.

Based on the information received during the project, the police assess the best interests of the child and take them into account in the enforcement of returns and their preparation in variable ways. In almost all of the returns monitored during the project, it was found that good care was taken of the children during the enforcement. According to the observations made during the monitoring, the importance of preparation for the return trip is emphasised in the returns of families with children.

During the monitoring, it has been observed that problems with assessing the best interests of the child or taking them into account may occur

when new information about the situation of the family or the children is discovered after the decision on the removal from the country has been made. For example, the investigation into the children's situation by the municipal child welfare services may still be in progress.

Children have the right to receive information appropriate for their age concerning the procedures related to the return, and in accordance with Article 12 of Convention on the Rights of the Child, their views should be determined whenever measures concerning children are taken. In the monitored cases, it was not found that the children would have been heard or that their views would have been investigated in situations in which changes took place before the enforcement of the return.

### **Recommendation:**

The police should create a clear process to assess the best interests of the child before enforcing the return. This must be designed together with experts and it must also be included as a part of police training.

### **Deficiencies in interpretation**

There is considerable variation in the language skills of persons being returned. It is of paramount importance that escort officers and the persons being returned understand each other. The importance of an interpreter is emphasised in acute situations related to the state of health, for instance. The Non-Discrimination Ombudsman has already drawn attention before to deficiencies in interpretation. The monitors have pointed out that the use of an interpreter is an essential part of respecting the human dignity of persons being returned.

Effective interaction makes the return operation smoother, enables taking into account the special need of vulnerable individuals, and it may reduce the need for the use of force. In the joint returns coordinated by Frontex, an interpreter is present throughout the operation. Telephone interpretation was used in the initial stage of the returns monitored during the project, but an inter-



preter was not present in any of them, and there was no interpretation available during the flight. In previous years, an interpreter has also been present during the trip in individual returns involving a charter flight.



**Effective interaction makes the return operation smoother, enables taking into account the special needs of vulnerable individuals, and it may reduce the need for the use of force.**

#### **Recommendation:**

An interpreter should be present during the removal from the country of a person in a vulnerable position throughout the operation, if there is no common language. Sufficient resources must be reserved for interpretation.

#### **Notifying the attorney and the decision-makers about changes in circumstances**

Occasionally, significant changes in the situation of the person being returned occur right before the return is enforced. They may involve sudden changes in the state of health, among other things. The person being returned may have been hospitalised due to a psychological illness or self-destructive behaviour, for example. Changes in circumstances may have a crucial impact on the assessment of the legal status of the person being returned, which is why it is important that their attorney and decision-maker are also notified about the changes in circumstances.

During the project, it was found that there was variation in how the changes in the circumstances of the person being returned or new information was transmitted further. Information and cases were discovered, in which the attorney and/or decision-maker was not informed about the hospitalisation of the person being returned or that

there were concerns about the situation of the children.

In the project, views of the authorities were investigated concerning who is responsible for notifying the decision-makers and the attorney of the person being returned about the changes in circumstances. The responses varied, and there are no instructions or common understanding for these situations; instead, in practice they are resolved on a case-by-case basis.

If the attorney or decision-maker does not receive significant information in an asylum or residence permit case, this poses a risk that the fundamental rights of the person being returned are not realised and that the principle of non-refoulement is violated. The Non-Discrimination Ombudsman considers it important that the police and the Finnish Immigration Service create structures for notifying the attorney of the person being returned and/or decision-makers of significant changes in circumstances that occur right before the return is enforced.

#### **Victims of human trafficking**

A key part of returns of victims of human trafficking is taking account of how the victim can access help and support in the country of return. The goal is to prevent the victim from becoming a victim of human trafficking again. This is required by Article 4 of the European Convention on Human Rights, according to which states have an obligation to protect people from slavery and forced or compulsory labour.

In its decisions, the Supreme Administrative Court has imposed two obligations on the executive authority in order to ensure that the victim's access to an assistance system in the destination country is realised<sup>75</sup>. With the victim's consent, the executive authority must notify a party specialising in assisting victims in the destination country about the victim of human trafficking being returned. If the victim of human trafficking being returned does not consent to this, the executive authority must offer the victim the contact information of parties that provide assistance in the destination country.

According to the information received during the project, victims of human trafficking rarely consent to their information being handed over to

the authorities in the destination country. Notifying the receiving country and receiving confirmation of the victim being admitted within the scope of services may nevertheless be the only factor protecting the victim of human trafficking from exploitation. Based on the information received from authorities during the project, the Non-Discrimination Ombudsman was left with the impression that the obligation of the Supreme Administrative Court guarantees the victim of human trafficking an opportunity to access help only in rare cases. There are two reasons for this. First, gaining the consent of the victim of human trafficking for the disclosure of information is challenging. Second, the decision of the Supreme Administrative Court was considered problematic due to practical matters as well as problems with jurisdiction, in addition to the fact that the obligation does not in reality guarantee the victim a right to access help in the destination country. This means that the assistance provided by the obligation is often only superficial. The current situation exposes the victims to further victimisation.

The Non-Discrimination Ombudsman emphasises that when the police discuss potential referral to assistance with a victim of human trafficking, the police must pay special attention to the content of the discussion, the time reserved for it and creating a confidential atmosphere.

The Non-Discrimination Ombudsman considers it important that in the work against human trafficking, structures are created for cross-border referrals that ensure that victims of human trafficking removed from a country also have access to assistance in the destination countries in return situations. The EU anti-trafficking networks are discussing a transnational referral mechanism for identifying victims of human trafficking and referring them to assistance. The goal should be taking the unique situation of a victim of human trafficking into account and referring them to concrete support measures in a return situation. Victims of human trafficking must not be returned to a country, in which they are at risk of being victimised again.

#### **Recommendation:**

The police should gather appropriate and up-to-date information on the parties providing assistance in key countries of return that the police contacts with the victim's consent before the return and/or whose contact information is provided to the victim for the trip.

### **3.5 The enforceability of decisions of removal from country and risk of violating the principle of non-refoulement**

Both in international conventions and its national legislation, Finland has committed to complying with the absolute principle of non-refoulement, according to which no one should be returned to an area where they are at risk of for example facing torture, cruel, inhuman or degrading treatment or punishment. Assessing the principle of non-refoulement is included in all decision-making under the Aliens Act. Removal from the country is a part of the asylum and residence permit process in situations, in which the application did not lead to a residence permit and the applicant is ordered to leave the country. The principle of non-refoulement is also assessed when a decision of removal from country is enforced. In practice, the other fundamental and human rights of the person being returned are often also assessed in connection with the enforcement of the refusal of entry or deportation decision, such as the best interests of the child and the state of health of the person being returned.

There may be several months between an enforceable removal decision and especially a return against the person's will, meaning that the situation of the person being returned may also have changed. It is possible to apply to Administrative Courts in connection with the appeal or during the appeal process for an interim decision to prohib-

it enforcement, but the courts have a fairly high threshold for issuing a prohibition in practice. The human rights monitoring bodies can also ask Finland to interrupt the enforcement of a return decision in connection with an appeal submitted to them. This section discusses problems related to removal from the country that are central to the human rights of the person being returned with regard to both legislation as well as the procedures. If these problems are not addressed, there is a risk that Finland may violate the principle of non-refoulement or the fundamental and human rights of foreign nationals in general.

In the monitoring of removals from the country by the Non-Discrimination Ombudsman, challenges have been discovered with regard to the enforcement of decisions on the refusal of entry concerning international protection in particular. The observations are related to the high threshold of national courts for ordering a prohibition of enforcement of the refusal of entry in addition to unclear legislation and inconsistent practices. One indication of the strict application practices of the Aliens Act and the inconsistency of enforcement is that in recent years, the monitoring bodies of international conventions have made several interim decisions on interrupting the enforcement of a removal decision in appeal cases against Finland.

### **3.5.1 Legislation and practice must be clarified**

The Aliens Act determines when a decision of removal from country is enforceable. Usually a decision can be enforced before a final decision has been issued concerning the appeal. For those who are applying for international protection, the general rule is that an appeal against a decision of the Finnish Immigration Service to an Administrative Court delays enforcement. There are exceptions to this general rule, however, such as when the applicant came to Finland from another Member State of the European Union or in certain situations involving subsequent applications. An appeal to the Supreme Administrative Court does not delay the enforcement of removal from the country.

In connection with the appeal procedure, an application for the temporary prohibition of enforcement of a decision of removal from country can be submitted to the Administrative Court and

the Supreme Administrative Court. The provisions of the Aliens Act vary regarding the time available for a court to issue a decision concerning an application submitted to it. The complex legislation causes uncertainty and ambiguity concerning the definition/estimation of the time of enforceability of a decision of removal from country and the related rights.

For instance, the Ombudsman knows of a case from November 2021, in which the Supreme Administrative Court only prohibited the enforcement of refusal of entry of an asylum seeker seven months after the application for a prohibition of enforcement had been submitted to the Supreme Administrative Court. Because the prohibition of enforcement had not been granted immediately after the application was submitted, the reception services of the asylum seeker in question had ended, and according to the interpretation of the police, the applicant had been employed without the right to work. Due to these significant rights bound to enforceability, too, the time of enforceability must be clearly defined.

The police are responsible for enforcing the decisions of removal from country while complying with potential court decisions prohibiting enforcement. The instructions of the National Police Board on removal from the country include entries on how the police verifies the enforceability of the decision of removal from country from the Supreme Administrative Court before the return. In the view of the Ombudsman, the method agreed by the police and the Supreme Administrative Court is too uncertain in situations such as ones in which a subsequent application for the prohibition of enforcement of removal from the country is submitted during the appeal process. The instructions and operating methods should be clarified.

The Non-Discrimination Ombudsman finds that the provisions of the Aliens Act on enforcement should be specified so that the police must always wait for the decision of an Administrative Court concerning an application for prohibition of enforcement before enforcing a removal from the country. In addition, the decisions concerning applications for prohibition of enforcement should always be made in writing. The Ombudsman finds that from the perspective of the principle of non-refoulement, the police should also be aware

of any potential new applications for prohibition of enforcement that may have been submitted in the appeal case.

### **Recommendations:**

- The provisions on the Aliens Act on the enforcement of removal from the country must be simplified and harmonised with a provision stating that a decision of refusal of entry or deportation cannot be enforced before a decision has been made concerning the application for a prohibition of enforcement.
- The exchange of information between the police and courts of law must be clarified so that the court notifies the police officially if a new application for a prohibition of enforcement has been submitted in the case.
- Administrative Courts should always issue a decision concerning applications for a prohibition of enforcement in writing, so that both the police and the attorney of the appellant are aware that the court has reviewed the case.

### **3.5.2 Prohibitions of enforcement by monitoring bodies of human rights conventions**

Based on the knowledge of the Non-Discrimination Ombudsman, there are a total of 20 appeals pending against Finland at the time of writing this Report to Parliament, in which an international body has issued a request to refrain from deporting the appellants. The appeals concern in total 51 people, 34 of whom are adults and 17 of whom are children. The appeals are pending at the UN Committee Against Torture (CAT), UN Committee on the Rights of the Child (CRC) and the UN Human Rights Committee (CCPR). The committees in question monitor that the States Parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the

Convention on the Rights of the Child and the International Covenant on Civil and Political Rights comply with the convention.

An appeal to international monitoring bodies of conventions can only be made after all national methods of legal protection have been exhausted. In practice, this means a time when a Finnish Administrative Court has not prohibited removal from the country due to an application for the prohibition of enforcement submitted in connection with the appeal, which is therefore enforceable. As a result, appeals to international monitoring bodies of conventions must be often submitted very close to the time of removal from the country, in which case there is a clear risk of a violation of the convention or even the principle of non-refoulement.

The instructions of the National Police Board on removal from the country state that the police comply with the prohibitions of enforcement by international monitoring bodies of conventions without exceptions, but the instructions do not state that when enforcing a removal from the country, the police should wait until a decision is issued concerning an application for the prohibition of enforcement submitted to the monitoring body. Usually, applications for the prohibition of enforcement are decided by monitoring bodies within a few days from the time when the appeal was instituted. The Non-Discrimination Ombudsman has issued the police a recommendation that the enforcement of removal from the country should be delayed until an international monitoring body of a convention has issued a decision concerning the application for the prohibition of enforcement. The Ombudsman has also found that the instructions of the National Police Board should be supplemented in this regard.

Drawing up an appeal to an international monitoring body of a convention is difficult for the attorney, and the schedule is usually urgent. It may also carry a risk of financial costs. All in all, the threshold for submitting an appeal to an international monitoring body is extremely high. The Ombudsman finds that the legal protection of those who are refused entry should not be dependent on the professional skills of individual attorneys and their resources for bringing the matter to be decided by an international monitoring body, when

there is a risk that Finland will violate its obligations based on the convention.

The Non-Discrimination Ombudsman finds it concerning that in so many cases brought to an international monitoring body within a relatively brief period of time, a Finnish Administrative Court has assessed the matter more strictly than the monitoring bodies with regard to the prohibition of enforcement. This is proof of the fairly strict interpretation of national Administrative Courts concerning Finland's human rights obligations, as well as the threshold for interrupting the enforcement of decisions. This also brings up a concern for the realisation of legal protection and the risk of violating the principle of non-refoulement.

### **Recommendation:**

In accordance with section 1 of the Aliens Act, special attention must be paid to recognising the fundamental and human rights guaranteed by international conventions in national decision-making. The Non-Discrimination Ombudsman urges the Ministry of the Interior to assess the importance of decisions of monitoring bodies of conventions that apply to Finland and the need to specify the importance of international obligations based on conventions in national decision-making during the project for the reform of the Aliens Act.



# Afterword and recommendations to the Parliament

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The area of responsibility and mandate of the Non-Discrimination Ombudsman are extensive. The Ombudsman is tasked with tackling discrimination, promoting equality and acting as the National Rapporteur on Trafficking in Human Beings as well as the monitor of enforcement of removal from the country, in addition to assessing and promoting the position and rights of foreigners. From the start of 2022, the Ombudsman was also assigned a new task as the Rapporteur on Violence against Women. Due to the broad area of responsibility, the Non-Discrimination Ombudsman has built a comprehensive overall picture of the status of fundamental and human rights in Finland as well as the position of different minorities.

During the past four years, there has been visible progress in the realisation of equality and human rights. More and more actors have started to promote equality and work against racism actively. Meanwhile, studies and the statistics of the Non-Discrimination Ombudsman show that there are still a lot of people who experience discrimination in Finland, and rights are not realised equally for all population groups.

There is much to be done before equality can become a reality for everyone. Structural discrimination must be addressed actively and equality must be promoted in all aspects of life; the realisation of fundamental and human rights must be placed at centre stage in issues related to the position of foreigners, the realisation of the rights of the child must be ensured better, and the legal protection of victims of human trafficking must be realised more effectively.

The Non-Discrimination Ombudsman has many ways of tackling discrimination and promoting equality enabled by the Non-Discrimination Act. Within the scope of the current regulations, however, the victim's legal protection is not realised well enough. Thus, in the partial reform of the Non-Discrimination Act, it is important to strengthen the legal protection of victims of discrimination, improve the possibilities of addressing discrimination, and make sure that proportionate consequences for discrimination can be realised.

Equality must be promoted widely in the society, and the authorities as well as public operators play a key role in this. The Non-Discrimination Act provides for the obligation of the authorities to promote equality. The authorities and other public operators must implement promotion measures more effectively, and more attention must be paid to equality impact assessment during bill drafting. Finland also has loopholes with regard to gathering information on discrimination and racism, which is why well-working structures should be created for information gathering.



People experience discrimination in a wide range of different aspects of life based on many different grounds for discrimination. During the past four years, the largest number of complaints about discrimination received by the Ombudsman have been based on disability and origin. Discrimination must be assessed effectively in all aspects of life by strengthening operating methods and practices for promoting equality as well as through changes in legislation. For example, in order to ensure that the equality of persons with disabilities is realised, changes are needed e.g. in the legislation on disability services in addition to taking measures to dismantle the structural obstacles in working life. The Act on the Sámi Parliament must be reformed so that the right of self-determination of the indigenous Sámi people is strengthened.

Respect for fundamental and human rights must be at the heart of decisions made concerning the status of people in a vulnerable position. The Aliens Act must be amended to ensure that the rights of the child are realised better than they currently are and that the overall situation of the applicant can be taken sufficiently into account. In the enforcement of removal from the country, attention must be paid to the condition of people in a vulnerable position who are being returned and identifying them.

Anti-trafficking work is carried out more and more extensively by different authorities, organisations as well as companies. The extensively prepared cross-administrative action plan is an effective way of promoting anti-trafficking work. The cornerstones of the work against trafficking in human beings are helping victims, the realisation of criminal liability, and the right of residence. Each of these aspects must be developed to ensure that the rights of victims of human trafficking are realised.

Based on the observations presented in this Report to Parliament, the Non-Discrimination Ombudsman issues the following recommendations to the Parliament.

# Recommendations of the Non-Discrimination Ombudsman to the Parliament

## EQUALITY IS THE FOUNDATION OF A JUST SOCIETY

### The legal protection of those who have experienced discrimination is strengthened

In the reform of the Non-Discrimination Act, the legal protection of those who have experienced discrimination must be strengthened. The Non-Discrimination Ombudsman considers especially the following changes important:

- The National Non-Discrimination and Equality Tribunal must have the opportunity to order compensation to be paid if the Tribunal finds that a person has experienced discrimination.
- The authority of the Non-Discrimination Ombudsman and the National Non-Discrimination and Equality Tribunal is expanded to cover cases of discrimination in working life.
- Obligations in accordance with the UN Convention on the Rights of Persons with Disabilities (CRPD) concerning reasonable accommodations as well as proactive preparation for the special needs of persons with disabilities using Design for All are recorded in the legislation.
- The obligation concerning equality planning is expanded so that it also applies to early childhood education and care.
- The obligation of the education provider to address harassment that targets pupils and students is provided for by law.
- The possibilities of the Non-Discrimination Ombudsman to promote equality, investigate discrimination cases and support the victims of discrimination are strengthened so that the Ombudsman's resources correspond to the significant growth of the number of complaints.

### Measures to promote equality are strengthened

- Equality planning and equality impact assessment are strengthened in the development of public administration and legislation.
- Structures for the gathering of information on discrimination and resources must be created and resources for it must be ensured.
- When official and essential services are digitalised, it must be ensured that services are provided via multiple channels.

### Discrimination is addressed in all aspects of life

- Equality and accessibility are ensured in the reform of the Limited Liability Housing Companies Act in accordance with the obligations of the UN Convention on the Rights of Persons with Disabilities (CRPD) that bind Finland.
- Housing consultation, which is accessible especially for people at risk of exclusion and homelessness, is provided for by law.
- Electronic identification must be implemented in a way that is equal for everyone. Legislation must be developed so that this can be implemented quickly.
- Comprehensive and precise obligations concerning equality impact assessment and transparency must be included in regulations on artificial intelligence and automated decision-making, in addition to regulations supporting effective monitoring.
- Due to the risks of discrimination in the supervision of foreign nationals and the ambiguity of section 129a of the Aliens Act, the provision must be reformed and the instructions of the authorities must be clarified.

- The roadmap for removing structural barriers to employment of persons with disabilities must be prepared and implemented without delay under the leadership of the Ministry for Employment and the Economy.
- The legislation on disability services and the pension system, as well as the regional ways of arranging disability services, must de facto promote entrepreneurship by persons with disabilities and their inclusion in working life.

### **The equality of the Sámi people must be strengthened**

- The Act on the Sámi Parliament must be reformed so that it strengthens the right of the Sámi to self-determination.

## **PROTECTING THE RIGHTS OF VICTIMS OF HUMAN TRAFFICKING REQUIRES MULTIDISCIPLINARY MEASURES**

### **To ensure the realisation of the rights of victims of human trafficking:**

- Functioning methods for identifying victims and referring them to the assistance must be built in the wellbeing services counties.
- The safe and supported housing of victims of human trafficking is provided for by law.
- The legislation on assisting victims of human trafficking must be changed so that the connection between the criminal proceedings and assisting victims of human trafficking is removed.
- The Aliens Act must be amended so that victims of human trafficking would be able to meet the requirements for granting a residence permit more frequently.

### **In order to ensure the more effective realisation of criminal liability:**

- Whenever possible, human trafficking investigations are assigned to investigators and heads of investigation specialised in the topic.
- The training of the police to identify human trafficking already at the early stages of the investigation must continue.
- The resources of the investigation team specialising in human trafficking must be permanently established.

## **THE FUNDAMENTAL AND HUMAN RIGHTS OF FOREIGN NATIONALS MUST HAVE A STRONG ROLE IN DECISION-MAKING**

- The Aliens Act must be amended to ensure that family life and the best interests of the child are fully realised. The application of the Act must not result in decisions that are in conflict with the best interests of the child.
- The Aliens Act must be amended so that it takes the overall situation of the residence permit applicant into account. The law must enable decisions that are favourable for the applicant better than it currently does.
- The residence of those who have arrived in Finland before the year 2017 and who still reside here without a residence permit should be legalised with a separate statute.
- The realisation of the rights of the returnees and the respect of non-refoulement must be secured and people in a vulnerable position must be recognised and their special needs must be considered in the implementation.

# Sources

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- <sup>1</sup> FRA 2018, Being Black in the EU/Second European Union Minorities and Discrimination Survey.
- <sup>2</sup> European Commission 2019, Discrimination in the European Union, Special Eurobarometer 493, Finland.
- <sup>3</sup> Akhlaq Ahmad 2019, When the Name Matters: An Experimental Investigation of Ethnic Discrimination in the Finnish Labor Market.
- <sup>4</sup> Nieminen K., Jauhola L. et al. 2020, Aidosti yhdenvertaiset - Yhdenvertaisuuslain arviointi (in Finnish). Publications of the Government's analysis, assessment and research activities 2020:50.
- <sup>5</sup> Supreme Administrative Court of Finland 2021, ECLI:FI:KHO:2021:189 (in Finnish).
- <sup>6</sup> Parliament of Finland, Perustuslakivaliokunnan lausunto 31/2014 vp (in Finnish).
- <sup>7</sup> Ståhl, Timo; Saaristo, Vesa; Wiss, Kirsi 2021, Hyvinvoinnin ja terveyden edistäminen kuntajohdossa – TEA 2021: Päätösten vaikutusten ennakoarviointi yhä yleisempää (in Finnish).
- <sup>8</sup> Yhdenvertaisuusvaltuutetun lausunnot oikeusministeriölle ja eduskunnalle 2021, VTDno-2021-317 (in Finnish).
- <sup>9</sup> United Nations, International Covenant on Civil and Political Rights 2021: CCPR/C/FIN/CO/7, 3.5.2021.
- <sup>10</sup> The Stopped - Pysäytetyt. Ethnic Profiling Research Project.
- <sup>11</sup> The Non-Discrimination Ombudsman 2020, Summary: Report on the discrimination experienced by people of african descent. The whole report in Finnish: Selvitys afrikkalaistaustaisten henkilöiden kokemasta syrjinnästä.
- <sup>12</sup> Poliisihallituksen laillisuusvalvontaselvitys 3.6.2021, POL-2021-48770 (in Finnish).
- <sup>13</sup> The Non-Discrimination Ombudsman 2021, Kannanotto suosituksineen helsingin poliisilaitoksen romaneihin kohdistaman ennaltaestämisen- ja tiedonkeruuoperaation johdosta (på finska).
- <sup>14</sup> Ministry of Justice, Finland 2021, Hate crimes and their handling in the criminal process. Publications of the Ministry of Justice, Reports and guidelines 2021:20.
- <sup>15</sup> Ministry of the Interior 2021, Report on the experiences of safety and security among vulnerable groups (in Finnish). Publications of the Ministry of the Interior 2021:21.
- <sup>16</sup> Finnish Government 2021, Government report on application of language legislation 2021. Publications of the Finnish Government 2021:90.
- <sup>17</sup> National Non-Discrimination and Equality Tribunal of Finland 2021, Oman äidinkielen käyttö viranomaisessa (in Finnish). 1063/2021.
- <sup>18</sup> Finnish Transport and Communications Agency 2018, Finnish National Travel Survey 2016.
- <sup>19</sup> European Commission 2021, Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030.
- <sup>20</sup> Ministry of Economic Affairs and Employment 2020, Structural barriers to employment of persons with disabilities (in Finnish). Publications of the Ministry of Economic Affairs and Employment 2020:36.
- <sup>21</sup> Ministry of Justice, Finland 2021, Fundamental right barometer (in Finnish). Publications of the Ministry of Justice, Reports and guidelines 2021:17.
- <sup>22</sup> The Non-Discrimination Ombudsman 2020, Summary: Report on the discrimination experienced by people of african descent. The whole report in Finnish: Selvitys afrikkalaistaustaisten henkilöiden kokemasta syrjinnästä.
- <sup>23</sup> Ministry of Justice, Finland 2021, Capable project. OM023:00/2021.
- <sup>24</sup> Supreme Administrative Court of Finland 2020, ECLI:FI:KHO:2020:60 (in Finnish).
- <sup>25</sup> National Non-Discrimination and Equality Tribunal of Finland 2021, Asuintalon sisäänkäynti. 813/2020 (in Finnish).
- <sup>26</sup> National Non-Discrimination and Equality Tribunal of Finland 2021, Asunto-osakeyhtiön remontti (in Finnish). 647b/2019.
- <sup>27</sup> The Non-Discrimination Ombudsman 2020, Press release 9.12.2021 (in Finnish).

- <sup>28</sup> The Housing Finance and Development Centre of Finland 2020, Tietoa vuokra-asumisesta romanasukille ja viranomaisille (in Finnish).
- <sup>29</sup> Council of Europe 2019, Discrimination, Artificial Intelligence and Algorithmic Decision-Making.
- <sup>30</sup> FRA 2020, Getting the future right – Artificial intelligence and fundamental rights.
- <sup>31</sup> Office of the United Nations High Commissioner for Human Rights 2021, The right to privacy in the digital age: report.
- <sup>32</sup> AlgorithmWatch 2020, Automating Society Report 2020.
- <sup>33</sup> The Non-Discrimination Ombudsman 2021, Valtuutetun lausunto lakivaliokunnalle, VTDno-2021-1212 (in Finnish).
- <sup>34</sup> Equinet 2020, Equinet Report: Regulating for an equal AI: A new role for equality bodies.
- <sup>35</sup> National Non-Discrimination and Equality Tribunal of Finland 2018, Luottokelpoisuuden arviointimenettely. 216/2017 (in Finnish).
- <sup>36</sup> Financial Supervisory Authority 2020, FIN-FSA points banks' attention on the requirement of non-discriminatory treatment of customers in the granting of credit. Supervision release 19 October 2020 – 65/2020.
- <sup>37</sup> United Nations Committee on the Elimination of Racial Discrimination 2020, General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials. CERD/C/GC/36.
- <sup>38</sup> The Non-Discrimination Ombudsman 2020, Summary: Report on the discrimination experienced by people of african descent. The whole report in Finnish: Selvitys afrikkalaistaustaisten henkilöiden kokemasta syrjinnästä.
- <sup>39</sup> FRA 2017, Second European Union Minorities and Discrimination Survey: Muslims - Selected Findings.
- <sup>40</sup> Ministry of Justice, Finland 2016, "I often find myself thinking how I should be or where I shouldn't go" – Survey on hate speech and harassment and their influence on different minority groups (in Finnish). Ministry of Justice, Finland, Publications 7/2016.
- <sup>41</sup> University of Helsinki 2021, White structures of mental health services can prevent young people from getting help. News and press releases.
- <sup>42</sup> Ministry of Justice, Finland 2022, An Equal Finland: Government Action Plan for Combating Racism and Promoting Good Relations between Population Groups. Publications of the Ministry of Justice, Memorandums and statements 2022:2.
- <sup>43</sup> Ministry of Justice and The Non-Discrimination Ombudsman 2021-2022, I Am Antiracist -campaign.
- <sup>44</sup> National Institute for Health and Welfare (THL) 2020, Sukupuoli- ja seksuaalivähemmistöihin kuuluvien nuorten hyvinvointi: Kouluterveyskyselyn tuloksia 2019 (in Finnish). Discussion Paper 38/2020.
- <sup>45</sup> Ministry of Justice, Finland 2021, Towards a more inclusive Finland for LGBTIQ people: Situational assessment of the fundamental and human rights of sexual and gender minorities in Finland 2021 (in Finnish). Publications of the Ministry of Justice, Reports and guidelines 2021:26.
- <sup>46</sup> The Non-Discrimination Ombudsman 2020, Summary: Report on the discrimination experienced by people of african descent. The whole report in Finnish: Selvitys afrikkalaistaustaisten henkilöiden kokemasta syrjinnästä.
- <sup>47</sup> United Nations 2021, Ihmisoikeuskomitea: Loppupäätelmät Suomen seitsemännestä määräaikaisraportista (in Finnish).
- <sup>48</sup> Ks. United Nations 2019, International Covenant on Civil and Political Rights No. 2668/2015.
- <sup>49</sup> The Non-Discrimination Ombudsman 2021, Yhdenvertaisuusvaltuutetun lausunto saamelaiskäräjälain muutosta almistelleeseen toimikunnan mietinnöstä (in Finnish).
- <sup>50</sup> The Non-Discrimination Ombudsman 2021, Yhdenvertaisuusvaltuutetun lausunto sosiaali- ja terveydenhuollon uudistukseen HE 241/2020 vp (in Finnish).
- <sup>51</sup> The Non-Discrimination Ombudsman 2021, Statement of the Non-Discrimination Ombudsman on the holiday and stand-in scheme for reindeer herders (in Finnish).
- <sup>52</sup> Rikosseuraamuslaitos 2020, Naisvankiselvitys: Selvitys naisvankien olosuhteista, toiminnoista ja turvallisuudesta (in Finnish). Rikosseuraamuslaitoksen monisteita 4/2020.
- <sup>53</sup> Ministry of Justice, Finland 2021, Finland fights human trafficking: Action Plan against Trafficking in Human Beings. Publications of the Ministry of Justice, Memorandums and statements 2021:24.
- <sup>54</sup> OSCE 2004, National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook.
- <sup>55</sup> The European Institute for Crime Prevention and Control (HEUNI) 2019, Lapsiin ja nuoriin kohdistuva ihmiskauppa Suomessa (in Finnish).

- <sup>56</sup> European Commission 2020, [Third report on the progress made in the fight against trafficking in human beings](#).
- <sup>57</sup> The Office of the Chancellor of Justice 2021, [Poliisin ja syyttäjien menettely sekä ihmiskaupan tutkinta \(pdf, in Finnish\)](#).
- <sup>58</sup> European Commission 2021, [EU Strategy on Combatting Trafficking in Human Beings 2021–2025 \(pdf\)](#).
- <sup>59</sup> OSCE 2021, [Discouraging the demand that fosters trafficking for the purpose of sexual exploitation](#).
- <sup>60</sup> The European Institute for Crime Prevention and Control (HEUNI) 2021, [Hyväksikäytöstä reiluun työelämään. Selvitys ulkomaalaistaustaisten ihmiskaupan uhrien työllisyyspalveluiden järjestämisestä Suomessa \(in Finnish\)](#).
- <sup>61</sup> Ministry of Economic Affairs and Employment of Finland 2021, [Report on the methods of preventing the exploitation of migrant labour in different countries \(in Finnish\)](#). Publications of the Ministry of Economic Affairs and Employment 2021:55.
- <sup>62</sup> The European Institute for Crime Prevention and Control (HEUNI) 2019, [Likainen vyyhti. Työperäisen hyväksikäytön liiketoimintamalli \(in Finnish\)](#).
- <sup>63</sup> Tax Administration 2020, [Ulkomaalaisten alipalkkaus harmaan talouden ilmiönä Suomessa – oikeustapa-analyysi \(pdf\) \(in Finnish\)](#). Selvitys 5/2020.
- <sup>64</sup> The Non-Discrimination Ombudsman 2021, [Summary: Residence permit practices concerning victims of trafficking in human beings \(pdf\)](#). The whole report in Finnish: [Ihmiskaupan uhrien oleskelulupakäytäntö \(pdf\)](#).
- <sup>65</sup> Sormunen Milka 2021, [The Best Interests of the Child in Human Rights Practice: An Analysis of Domestic, European and International Jurisprudence](#). Doctoral dissertation, University of Helsinki.
- <sup>66</sup> Hallituksen esitys Eduskunnalle ulkomaalaislaiksi ja eräksi siihen liittyviksi laeiksi 2003. HE 28/2003 vp. (pdf, in Finnish).
- <sup>67</sup> The Non-Discrimination Ombudsman 2020, [Summary: Children without families – family reunification of under-age beneficiaries of international protection \(pdf\)](#). The whole report in Finnish: [Lapset ilman perhettä - kansainvälistä suojelua saaneiden alaikäisten perheen yhdistäminen \(pdf\)](#).
- <sup>68</sup> Supreme Administrative Court of Finland 2020, [ECLI:FI:KHO:2020:64 \(in Finnish\)](#).  
Supreme Administrative Court of Finland 2020, [ECLI:FI:KHO:2020:63 \(in Finnish\)](#).
- <sup>69</sup> University of Turku, Åbo Akademi, The Non-Discrimination Ombudsman 2018, [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 \(pdf, in Finnish\)](#).
- <sup>70</sup> The Non-Discrimination Ombudsman 2021, [Kirje ulkoministerille ja sisäministerille Suomessa asuvien afganistanilaisten perheenjäsenten tilanteesta \(pdf, in Finnish\)](#).
- <sup>71</sup> The Non-Discrimination Ombudsman 2022, [Yhdenvertaisuusvaltuutetun kannanotto ulkoministeriölle: Suomessa asuvien afganistanilaisten oikeus perhe-elämään turvattava \(in Finnish\)](#).
- <sup>72</sup> The Non-Discrimination Ombudsman 2020, [Monitoring the enforcement of removals from the country observations from 2014–2019 \(pdf\)](#).
- <sup>73</sup> The Non-Discrimination Ombudsman 2021, [Miten vahvistaa palautettavien oikeuksia – haavoittuvuuden tunnistaminen ja huomioon ottaminen palautustoiminnassa \(pdf, in Finnish\)](#).
- <sup>74</sup> Käännyttämistä ja maasta karkottamista koskevan päätöksen täytäntöönpano (POL-2021-67956, in Finnish).
- <sup>75</sup> Supreme Administrative Court of Finland 2017, [ECLI:FI:KHO:2017:42](#).  
Supreme Administrative Court of Finland 2017, [ECLI:FI:KHO:2017:43](#).







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