

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

### **CONTENTS**

Non-Discrimination Ombudsman	4
<u>Foreword</u>	õ
Accessibility is not excessively costly, but discriminating attitudes can become expensive	6
Monday belongs to everyone – campaign for promoting equality in the	
employment of persons with disabilities	7
An efficient national program is needed to weed out racism and prejudice	C
Publicly displaying the Nazi swastika flag is illegal	2
Non-Discrimination Ombudsman's customer statistics 2018	4
The use of AI causes a considerable risk of discrimination	6
Equality in the real estate market is improved through education	3
Discrimination and prejudice prevent people from practicing sports and joining sports clubs 20	J
Out-of-pocket expenses for athletes with disabilities demonstrate the equality challenges of disabled sports. 2	1
Ageism in the recruitment of special jaeger non-commissioned officers	3
Improved equality in military service through a comprehensive reform	4
More voices make for better media	ō
The National Rapporteur on Trafficking in Human Beings pays attention to the status and rights	
of victims	7
Human trafficking as violence against women	7
The task of the Non-Discrimination Ombudsman: Promoting the status and rights of foreign	
nationals	3
Refugees' right to a family life	7
Monitoring removal from the country: removal situations have become more challenging	J
Personnel at the Non-Discrimination Ombudsman's office	4

## Non-Discrimination Ombudsman

The Non-Discrimination Ombudsman promotes equality and handles cases of discrimination. The Ombudsman is an autonomous and independent authority.

You can contact the Non-Discrimination Ombudsman if you have experienced or witnessed discrimination based on age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relations, state of health, disability, sexual orientation, or other personal characteristic. The Ombudsman also works towards improving the rights and status of groups at risk of discrimination. Additionally, the Ombudsman monitors the removal of foreign nationals from the country and is the National Rapporteur on Trafficking in Human Beings.

In practice, the work of the Non-Discrimination Ombudsman includes guidance, investigation of individual cases, negotiating reconciliation, training, gathering information, influencing legislation and the practices of authorities, and legal counselling. The duties and rights of the Ombudsman are stated in the Non-Discrimination Act and the Act on the Non-Discrimination Ombudsman.

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

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

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

**CONTACT INFORMATION:** 

Email (customer service and registry): yvv@oikeus.fi

Personnel's email:

firstname.surname@oikeus.fi

Reports to authorities: yvv.ilmoitukset@oikeus.fi

Media:

viestinta.yvv@oikeus.fi

#### **POSTAL ADDRESS:**

Yhdenvertaisuusvaltuutetun toimisto PL 24 00023 Valtioneuvosto

#### **PHONE NUMBERS:**

Customer service:

**0295 666 817** (Telephone helpline on weekdays 10–12)

Exchange: 0295 666 800 Media contact: 0295 666 813

Fax: 0295 666 829

Internet: <a href="www.syrjinta.fi">www.syrjinta.fi</a>
Twitter: <a href="www.syrjinta.fi">@yhdenvertaisuus</a>

Facebook: www.facebook.com/yhdenvertaisuus Instagram: @yhdenvertaisuusvaltuutettu LinkedIn: yhdenvertaisuusvaltuutettu



# Foreword for annual report 2018

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

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

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



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

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

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

Kirsi Pimiä

## Accessibility is not excessively costly, but discriminating attitudes can become expensive

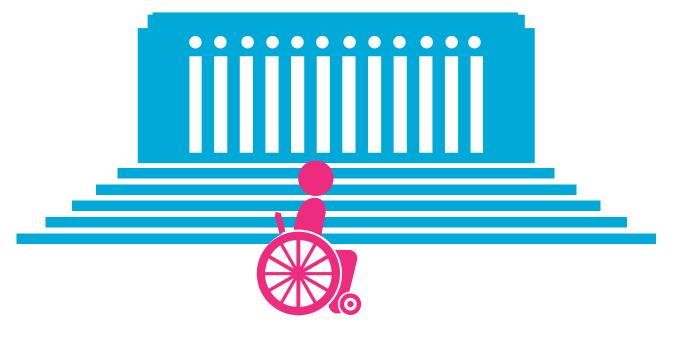
Imagine that you are a person using a wheelchair. In order for you to access your home in a block of flats, a ramp must be installed outside the building. This is technically possible, but the housing company objects and will not permit the installation of a ramp, even if someone else were to pay for it. The board of the housing company believes that the ramp would make the building look unattractive. *True story*.

Imagine that you are a university student. Some lecture halls are accessible by wheelchair while others are not. You make a request for a lecturer to move a lecture to an accessible lecture hall so that you would be able to attend. The lecturer refuses to move the lecture. In the end, your friends carry you in so that you can attend. *True story.* 

Disability has been the most common reason for contacting the Ombudsman. Many cases regarding shortcomings related to accessibility still come to the attention of the Ombudsman. The Ombudsman emphasises the importance of respecting the self-determination of persons with disabilities, and the full enforcement of equality in society, with regard to structures as well as attitudes. The prevailing attitudinal climate is one essential factor behind the problems encountered by persons with disabilities.

There was a town where there was no wheelchair access to the police station, Kela, tax office, enforcement office, or TE office service points. After the Non-Discrimination Ombudsman stepped in, renovations were done in the office buildings; ramps were lowered, exterior doors were widened, interior doors were removed, and door buzzers were installed. Additionally, the Ombudsman has improved the accessibility of seminars. In one case, ramps were installed at a school so that a student's wheelchair-using parent was able to attend events at the school. In the spring of 2018, the Ombudsman also negotiated a reconciliation for persons with a slight mental disability who had for two years been paying higher rent than other, non-disabled people in the same housing company that was owned by the city.

An issue that seems to resurface at an increasing rate is the lack of accessibility in housing companies. Serious consideration should be given to extending the requirement of accommodation to at least partly cover housing companies. Problems have arisen for example in connection to the storage of electric mopeds, to the disinclination to grant disability services permission to carry out alteration work, and to practices related to lift renovations.



## THE OMBUDSMAN IS REGULARLY CONTACTED ABOUT MATTERS CONCERNING DISABILITY SERVICES

Unfortunately, the Non-Discrimination Ombudsman receives contacts each month concerning the refusal of disability services or dysfunctional practices existing in disability services. In such situations, the Ombudsman has very limited operating possibilities; the primary way of accessing one's rights is appealing a decision through the actual legal remedies. One method at the Ombudsman's disposal in these situations has been to provide a statement for the court in accordance with Section 27 of the Non-Discrimination Act. When the Non-Discrimination Ombudsman provides a statement that the Non-Discrimination Act has been violated, a misinterpretation of the Act on Disability Services and Assistance has usually also occurred, or at the very least a denial of reasonable accommodation in decision-making. For example, there was a case where, after receiving a statement from the Non-Discrimination Ombudsman in accordance with Section 27 of the Non-Discrimination Act, a municipality reimbursed the personal assistants of a person with severe disabilities for the hotel and travel expenses of a cancelled trip. The trip had been cancelled because the person with severe disabilities had fallen suddenly ill right before the trip. The municipality had previously granted the person permission to use personal assistants during this trip.

In a case related to transport services, the Non-Discrimination Ombudsman provided a statement for the court in which it was considered unreasonable that the claimant, who, in accordance with the Act on Disability Services and Assistance, used transport services due to a severe handicap, accrued significantly higher expenses for travel between home and secondary school than those students who used public transport for their school travel (with school transport subsidy 43 € per month, with disability services transport over 200 € per month). The Ombudsman considers that Section 15 of the Non-Discrimination Act (1325/2014) on reasonable accommodation should have been applied in the case. The Administrative Court found that the decision of the municipality's welfare committee was in violation of the Non-Discrimination Act and ruled that the welfare committee must make reasonable accommoda-tions to the out-of-pocket expenses of the claimant's transport services in order for the claimant to receive equal support for school transport compared to that received by other secondary school students (02134/17/6108).

The procurement of life-long services for persons with disabilities, including housing and interpretation services, should not be left to the discretion of procurement units such as municipalities, counties, or, for example, the Social Insurance Institution.

The Ombudsman believes that the legislation on Kela's school transport subsidy must be reviewed in order to ensure that the equality of students with severe handicaps will not be solely based on reasonable accommodation in individual cases.

## COMPETITIVE TENDERING IS NOT OBLIGATORY IN DISABILITY SERVICES

According to the legislation, municipalities do not have to conduct competitive tendering for the long-term care services for persons with disabilities. Services do not need to be tendered at regular intervals, and municipalities are not obligated to choose the cheapest offer. Municipalities can also produce the services themselves. However, tendering does occur. Recurring changes in service providers hinder the possibilities of persons with disabilities to affect their living environment. Furthermore, persons with disabilities have no say in whether their municipalities conduct tendering or not. The procurement of life-long services for persons with disabilities, including housing and interpretation services, should not be left to the discretion of procurement units such as municipalities, counties, or, for example, the Social Insurance Institution.

## HEARING OF THE NON-DISCRIMINATION OMBUDSMAN IN COURT

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

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

Section 27 Hearing of the Non-Discrimination Ombudsman

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

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

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



# MONDAY BELONGS TO EVERYONE - CAMPAIGN FOR PROMOTING EQUALITY IN THE EMPLOYMENT OF PERSONS WITH DISABILITIES

During autumn 2018, the Non-Discrimination Ombudsman and the Centre for Human Rights organised a joint campaign called "Monday belongs to everyone". The campaign's purpose was to remind people that everyone should have a chance to participate in employment. The campaign content was received well in social media. The content was viewed in Finland approximately 500,000 times, and it reached a wide audience. Yle's news article on the campaign was read one million times, and an article published in Helsingin Sanomat was read 773,000 times.

About 80 % of persons with disabilities are not currently employed. Their employment rate is poor when compared to their level of education; about 60 % of persons with disabilities have a degree in secondary or higher education. Obstacles in employment are caused for example by employers' lack of information on types of support available as well as prejudices on the work ability and competence of persons' with disabilities.

Persons with disabilities are too often seen as only partially able to work, which causes employers to think that employing them would require extensive financial support functions from the part of the employer. In reality, many persons with disabilities are capable, highly trained individuals who are fully able to work in positions corresponding with their education. If alteration work or support is required at the workplace, support for this can be obtained from TE services, Kela, or the municipality's disability services.

According to the Ministry of Social Affairs and Health, 1.9 million working-age Finns have a long-term illness or disability. 600,000 of them consider this to affect their work and employment possibilities.

According to the National Institute for Health and Welfare, 241,000 working-age Finns receive disability benefits. This means 7 % of the working-age population.

According to a survey conducted in 2018 by the Centre for Human Rights and Vammaisfoorumi ry, approximately 14 % of person with disabilities (=2022) are employed. Out of the respondents, 43 % receive full-time pension.

According to the National Institute for Health and Welfare, about 60 % of person with disabilities have a degree in secondary or higher education. 78 % of the non-disabled population have a degree in secondary or higher education.

Campaign site:

www.facebook.com/maanantaikuuluukaikille/



# An efficient national program is needed to weed out racism and prejudice

Discrimination is often based on ignorance and subconscious prejudices. However, the rise of populism and nationalism have made attitudes harsher and increased the open display of racism and hate speech in Finland. Racism and a prejudicial environment can lead to different kinds of discriminatory acts in everyday life, such as harassment at educational establishments, discrimination in recruitment processes, or denial of service in shops. Racism should be acknowledged as a serious problem, and action should be taken to employ efficient preventive measures through the introduction of a national action plan.

## STUDIES AND INCIDENTS REFLECT THE EXTENT AND SEVERITY OF THE PROBLEM

Racism may emerge as hate speech, discrimination, violence, or seemingly neutral practices, which, in reality, exclude a part of the population. Racism is experienced for example based on origin, appearance, religion, and language.

The extent and severity of racism is best understood by those who have experienced it. The commonness of racism is also demonstrated by several studies, contacts received by the Non-Discrimination Ombudsman, and the hate crime statistics of the police. At the end of 2017, the EU published a report on discrimination experienced by ethnic minorities, and it displayed a worrying amount of racism in Finland (EU MIDIS II). In the case of Finland, first and second-generation immigrants from Sub-Saharan Africa were interviewed. 45 % of the respondents of the survey had encountered discrimination in Finland during the last 12 months.

In addition to immigrants, negative attitudes are also directed at national minorities, such as the Finland-Swedish, the Sami, and the Roma people. Studies published in 2018 show that the Roma population in Finland commonly experience discrimination (the National Institute for Health and Welfare report on the welfare and agency of the Roma and the final report of the University of Helsinki research project on ethnic profiling in Finland). Based on these studies and people contacting the

Non-Discrimination Ombudsman, prejudice against the Roma people typically manifests in discriminatory treatment for example in shops and restaurants but also in the activities of authorities.

Discrimination and hate crimes should not be seen solely as isolated incidents but the structural discrimination and racism behind these incidents should be acknowledged.

# HATE SPEECH INCREASES DISCRIMINATION AND VIOLENCE – THEREFORE IT MUST BE ADDRESSED EFFICIENTLY

As the social atmosphere becomes harsher and the discussion becomes increasingly polarised, hate speech has become more visible. Even in Finland, public debate defends the idea that, based on the freedom of speech, it would be acceptable to say anything, no matter how insulting or racist it is. Freedom of speech does not entitle anyone to violate a person's dignity. The conduct of politicians and other high-profile individuals have an impact beyond that of isolated incidents in affecting general attitudes and even people's behaviour. Freedom of speech is always linked to responsibility.

A particularly blatant example of racism in Finland is the increased activity and visibility of openly racist organisations. Neither the freedom of speech nor the freedom of assembly give a person the right to violate the dignity of another individual. Openly racist organisations, whose ideology and actions are deeply offensive to the dignity of other persons, do not enjoy the freedom of assembly nor the freedom of speech, included in the fundamental and human rights.

In addition to pre-emptive action, efficient handling of hate crimes is needed: defamation and ethnic agitation motivated by hatred must be investigated, and the perpetrators must be prosecuted efficiently. The police and prosecutors play a significant part in demonstrating that threats, insults and other hate crimes made with discriminatory motives are serious crimes. Intervening in

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

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

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

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

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

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



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

#### **ACTION PLAN:**

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



## PUBLICLY DISPLAYING THE NAZI SWASTIKA FLAG IS ILLEGAL

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

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

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

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

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

#### **SECTION 14 OF THE NON-DISCRIMINATION ACT**

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

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

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



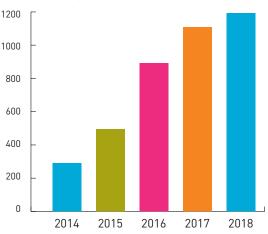
# Non-Discrimination Ombudsman's customer statistics 2018

In 2018, the Non-Discrimination Ombudsman was contacted more times than during the previous years. In 2018, the experts of the Office of the Non-Discrimination Ombudsman handled a total of 1,192 suspected cases of discrimination. 924 of these were new cases of discrimination, which is nearly 20 % more than in 2017. The Non-Discrimination Ombudsman's processing time has become faster than previously, which mostly has to do with the fact that most cases are related to guidance.

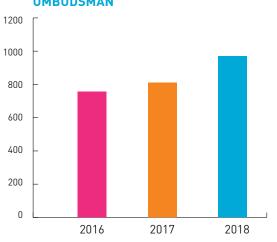
## ORIGIN AND DISABILITY ARE STILL THE MOST COMMON REASONS OF DISCRIMINATION

Discrimination based on disability is the most common reason for people contacting the Non-Discrimination Ombudsman. In previous years, contacts related to discrimination based on origin were more common. Cases related to ageism have increased.





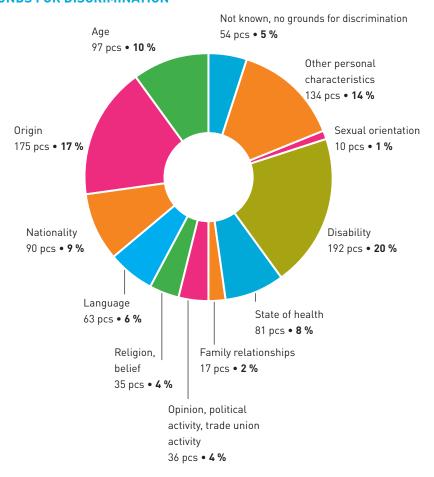
### DISCRIMINATION CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN



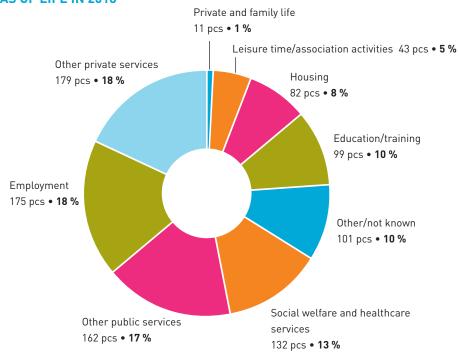
# DISCRIMINATION CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN IN 2018 – DISABILITY AS A GROUND FOR DISCRIMINATION IN DIFFERENT AREAS OF LIFE

Private and family life	2 pcs	1 %						
Leisure time/association activities	10 pcs	5 %						
Housing	19 pcs	10 %						
Education/training	25 pcs	13 %						
Other/not known	7 pcs	4 %						
Social welfare and healthcare services	43 pcs	22 %						
Other public services	36 pcs	19 %						
Employment	11 pcs	6 %						
Other private services	39 pcs	20 %						
								_
			0	5	10	15	20	

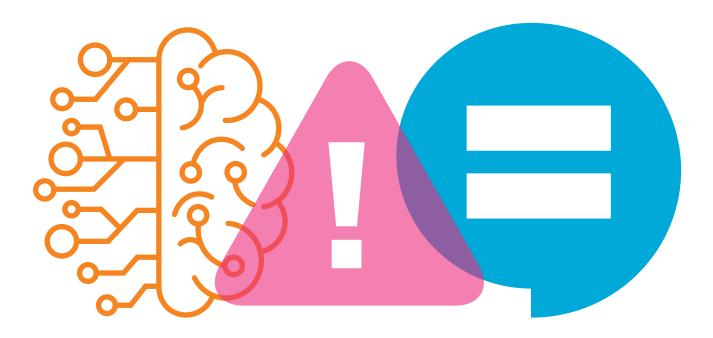
## DISCRIMINATION CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN IN 2018 ACCORDING TO THE GROUNDS FOR DISCRIMINATION



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



# The use of AI causes a considerable risk of discrimination



A customer was buying products from an online hardware store. As the payment method, they chose a credit invoice, which was offered to customers in general. Even though the customer's credit information was fine, the creditor denied credit. The evaluation on creditworthiness was based on automated decision-making where a score was given for the person's gender, official mother tongue, age, and place of residence. The customer contacted the Non-Discrimination Ombudsman, who took the case to the National Non-Discrimination and Equality Tribunal.

In its ruling in spring 2018, the National Non-Discrimination and Equality Tribunal stated that the creditor's conduct is multiple discrimination. The creditor had denied the customer credit on rigid and statistical grounds, and the customer's individual credit information was not evaluated in a manner required by law. Additionally, the customer had not been given the chance to provide further information in order to gain a more individualised evaluation.

In regard to the modes of discrimination, the Tribunal stated that scoring based on gender is not acceptable for the evaluation of creditworthiness. Scoring based on mother tongue was considered particularly reproachable when it is based on an official mother tongue provided for in the Constitution of Finland. The Tribunal stated that everyone has a constitutional right to choose their place of residence. In regard to age, the Tribunal stated that differential treatment in evaluating creditworthiness can be acceptable mainly for the part of young people.

Additionally, the Tribunal stated that financial grounds, meaning the method being inexpensive for the company, are not sufficient for justifying differential treatment based on prohibited grounds for discrimination in the evaluation of creditworthiness. The Tribunal imposed a conditional fine of EUR 100,000 on the creditor to prevent further discrimination. The creditor did not appeal the decision.

To the Ombudsman's knowledge, the Tribunal's decision was the first legal solution in Europe concerning discrimination based on algorithms. The ruling has received a lot of interest internationally. The message for creditors is clear: customers are individuals, and they should be treated accordingly. The company is responsible for the non-discriminating nature of its operations regardless of whether the decisions are made by a person or an algorithm.

In accordance with Section 22 of the Constitution of Finland, the central requirement for the use of AI in the operations of authorities must be that it furthers the realisation of fundamental and human rights. Special attention should be paid to ensuring that, when generating categories for profiling, no prohibited grounds for discrimination are used, unless justifiable grounds for this can be given in accordance with non-discrimination legislation.

## THE USE OF AI IS INCREASING IN THE ACTIVITIES OF AUTHORITIES

The use of AI will also increase in the activities of authorities. The Non-Discrimination Ombudsman made a statement regarding the development and action plan of the Ministry of Finance national AI programme AuroraAI for 2019–2023. In the statement, the Ombudsman highlighted the following matters: In accordance with Section 22 of the Constitution of Finland, the central requirement for the use of AI in the operations of authorities must be that it furthers the realisation of fundamental and human rights. Special attention should be paid to ensuring that, when generating categories for profiling, no prohibited grounds for discrimination are used, unless justifiable grounds for this can be given in accordance with non-discrimination legislation.

During evaluation, attention should also be paid to the openness of the lists for grounds of discrimination provided for in the Constitution of Finland and the Non-Discrimination Act. Such a reason may be for example the place of residence of a person. When planning operational procedures, it is important to take into account that discrimination can also occur when seemingly neutral pieces of information are combined to indirectly create a category linked to prohibited grounds for discrimination. The discriminatory impact of algorithms must be tested in practice, and their use should be continuously monitored after the introduction of the system in order to observe the indirect impact on the actual equal treatment of individuals. Violation of the provision of the Non-Discrimination Act does not require premeditation on the part of the perpetrator. Illegal action can also occur without an intent to discriminate. In terms of the Non-Discrimination Act, it is also irrelevant whether the discriminating treatment occurred due to the actions of a person or an algorithm. The party responsible for the system is responsible for the legality of its use, regardless of whether it is produced by a person or an algorithm.

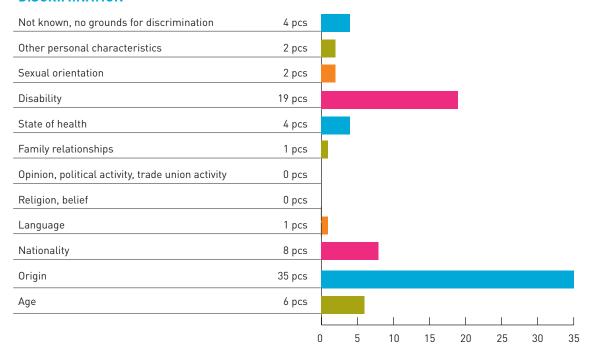
# Equality in the real estate market is improved through education

The recently updated version of the Finnish manual for real estate agents now contains information on the Non-Discrimination Act and on non-discrimination in the real estate market. A section on discrimination and the Non-Discrimination Act has also been included in the training programme and degree requirements for real estate agents. During autumn 2018, the Non-Discrimination Ombudsman met with the Union of Real Estate Agencies in Finland, the real estate agents' association (Suomen Kiinteistövälittäjät ry), and the chair of the legal committee comprising experts in the field. Based on this discussion, the Ombudsman created materials on the Non-Discrimination Act for the parties in question to be included in the training programme for real estate agents. During the meeting, some further action to promote joint development work was also discussed.

As a publicly available service, the operation of real estate agents falls under the scope of the Non-Discrimination Act (Section 2).

Every person needs a home. However, discrimination in the real estate market, especially based on the applicant's origin, is, unfortunately, very common. Foreign nationals and people whose names are not traditionally Finnish report that they often miss out on rental flats for this reason. Housing advertisements may restrict applications from certain groups, such as families with children, students, or foreign nationals. A private lessor has expressed a wish to the real estate agent that their flat not be rented to Roma people. A person with asthma and lung problems has difficulty in committing to a year-long rental agreement without a trial period because they cannot be sure of the suitability of the flat for their health before having lived in it for a while. Application forms may have issues of accessibility. These are only a few examples of discriminating treatment.

# DISCRIMINATION CONTACTS RECEIVED BY THE NON-DISCRIMINATION OMBUDSMAN – HOUSING SECTOR ACCORDING TO THE GROUNDS FOR DISCRIMINATION



The seller or lessor and the real estate agent may, based on their commission, evaluate and select lessees but not on discriminating grounds. The seller, lessor and real estate agent can naturally place requirements on the buyer or lessee's ability to pay and to fulfil other responsibilities of a rental agreement. However, the selection of a lessee cannot be based for example on the person's origin, nationality, religion, or disability. The seller, lessor and real estate agent are in violation of the Non-Discrimination Act if a person is treated unequally without justifiable grounds based on reasons related to the person.

Additionally, it should be noted that a real estate agent is in violation of the Act if they accept the customer's discriminating conditions, for example, not wanting to rent a flat to a member of the Roma community or a foreign national.

For the part of customers with disabilities, the real estate agent should also be aware of Section 15 of the Non-Discrimination Act regarding reasonable accommodation, which obligates a service provider to make appropriate and required adjustments in order for a person with disabilities to have equal access to publicly available services. For the part of real estate agents, this means for example assisting a customer with visual impairment in filling out a rental application or providing a customer with hearing impairment with a written account of any required information. For the part of the lessor, this can mean for example taking into account the needs of a lessee with physical disabilities and an obligation to carry out reasonable adjustment work to make the flat suitable for a tenant with disabilities.

A person who has been discriminated against or victimised is entitled to receive compensation from both the lessor and the real estate agent who has discriminated against or victimised the person contrary to the Non-Discrimination Act. If the real estate agent is an employee, the employer is responsible for the compensation (Section 23 of the Non-Discrimination Act). Additionally, the victim of discrimination has the right to receive compensation for any suffering or material damage.

The seller or lessor and the real estate agent may, based on their commission, evaluate and select lessees but not on discriminating grounds.

The Non-Discrimination Ombudsman was heard at the Prosecutor's Office of Western Finland regarding a criminal case related to a member of the Roma community renting a flat. The Ombudsman stated that this was an example of discrimination against the Roma community, which unfortunately occurs frequently, and as such can be considered a discrimination offence. The Ombudsman brought to the prosecutor's attention that an offence has occurred even if the perpetrator believes to have had justifiable grounds for their actions, and in terms of the Non-Discrimination Act, the only requirement of premeditation is knowledge of the existence of the grounds of discrimination and placing significance on such grounds in the treatment of the person. The case also involved the issue of the real estate agent's responsibility in acting in a discriminating manner under instructions provided by the lessor. The Ombudsman brought to the prosecutor's attention that EU directives that govern Finnish case law require that the consequences of discrimination – including monetary compensation for the victim - are efficient, proportionate, and cautionary

# Discrimination and prejudice prevent people from practicing sports and joining sports clubs



Sports and physical activity are a part of life. In 2018, the Non-Discrimination Ombudsman has endeavoured to promote the equal treatment of all kinds of people in sports activities. This work has included for example seminar presentations on the aspects of the Non-Discrimination Act that pertain to sports and instructing sports club representatives on how to respond to the right of persons with disabilities to reasonable adjustments.

According to the Act on the Promotion of Sports and Physical Activity, when eligibility requirements for state aid are considered, how the union promotes non-discrimination and equality is taken into account. This means that there is also a financial incentive. Committing to the promotion of non-discrimination brings added advantage to an association in other ways as well; it increases members' possibilities to participate, which promotes an experience of fairness.

Many of the measures that can be used to promote non-discrimination in an association's activities are small adjustments that can have a big practical impact. The measures can be very simple and will not necessarily cost anything. For example, setting ground rules for interfering with harassment, such as homophobic or racist jokes, can help promote an atmosphere of respect and acceptance. This way everyone can feel welcome in the association's activities as who they are.

Increased equality increases well-being and commitment to the association. Promoting non-discrimination also has an impact on the sports club's identity. Mem-

bers can be proud of the club's values, which helps make the club more attractive and enhances its image.

Non-discrimination does not mean the same for everyone, but different situations need to be considered individually to provide equal treatment for everyone. Sports clubs can reach a wider audience by taking non-discrimination into account in their activities. It is therefore important that the diversity of different kinds of members is taken into account in the activities of associations. The diversity of members in the activities of an association is a clear strength.

A gym made a clear statement that asylum seekers were not welcome customers. However, there were no justifiable grounds for such a restriction. The foundation of non-discrimination is that all people must be treated and evaluated as individuals, not based on prejudice against the members of a specific group.

A martial arts club imposed a requirement that members are not allowed to have blood-borne diseases. Such a categorical prohibition can be difficult to justify in terms of the Non-Discrimination Act. State of health is one of the grounds for discrimination, and in this case a large group of people were excluded from a sport based on a prejudice related to state of health. For example, HIV cannot be contracted in regular everyday contact. People who are taking preventive medication can lead a normal life – excluding special health care – and this normal life preferably includes physical activity.

## OUT-OF-POCKET EXPENSES FOR ATHLETES WITH DISABILITIES DEMONSTRATE THE EQUALITY CHALLENGES OF DISABLED SPORTS

In the autumn of 2018, there was a public debate about the 'deductibles' or out-of-pocket fees collected for participating in the World Para Athletics European Championships. The Non-Discrimination Ombudsman was also directly contacted about these fees.

The issue with the out-of-pocket fees has demonstrated that, despite of a good equality plan, organisations can make decisions that do not promote the realisation of equality. There is a need for promotion work by various actors with regard to adapted physical activity, disabled sports and elite para sports.

The Ombudsman discussed the financing of disabled sports and the liability for costs with several actors. In the Ombudsman's opinion, the out-of-pocket fees for athletes participating in the Para Athletics European Championships are problematic in terms of full achievement of equality. The matter was not unequivocal, however, with regard to violating the prohibition of discrimination. The Ombudsman did not assess whether the collection of out-of-pocket fees constitutes discrimination, as defined in the Non-Discrimination Act, or assess the justifications for different treatment or the proportionality of actions. Within its mandate, the Ombudsman assessed that the most appropriate approach in this matter is to promote equality.

To form a complete picture of the case, it was necessary to study the factors that affect the out-of-pocket fees and how various actors can promote the equal status of para-athletes. The aim of equality-promoting measures is to achieve structural and permanent changes that have a broader impact on the equality of para-athletes than the individual case, i.e. the out-of-pocket fees for the 2018 European Championships.

As exercisers of public authority, the Ministries and municipalities are bound by Article 30 of the UN Disability Convention and the Non-Discrimination Act to promote the realisation of equality. In the opinion of

the Ombudsman, it is important to evaluate whether the current financing mechanisms of the Ministries sufficiently guarantee the realisation of equality in sports.

The procedure and the issued recommendations are related to the status of athletes with disabilities. Public debate has also featured the status of young athletes. The Ombudsman restricted its assessment to athletes with disabilities. Their situation is unique because of the CRPD and its binding nature on the State and the municipalities.

The different sports and competition levels, distribution by sex and/or age group form a large entity. It is clear that the assessment of equality cannot be based on the general comparison that includes everyone. In the Act on the Promotion of Sports and Physical Activity, the Ministry of Education and Culture emphasises the importance of non-discrimination and equality plans in the promotion of non-discrimination. The Ombudsman considers it important that the sports associations represent equality and create opportunities for various athletes and people who engage in physical activity. In addition to plans, the promotion of equality should be part of everyday work, training, competitions, construction projects for sports facilities, and the work of sports clubs.



#### THE OMBUDSMAN RECOMMENDS THE FOLLOWING:

- The Finnish Athletics Federation should remove the out-of-pocket fees for athletes with disabilities at least for European and World Championship competitions.
- 2. The Ministry of Education and Culture should investigate the availability of athlete subsidy packages for covering the assistant costs of elite athletes with disabilities.
- 3. The Ministry of Education and Culture should develop the financing structure for athletes and sport associations in line with the obligations of the CRPD and ensure that it provides stronger support for the equality of athletes with disabilities.
- 4. The Ministry of Social Affairs and Health should assess, in connection with the reform of the Act on Disability Services and Assistance, the status of sports with regard to assistant and transport services. Sports should be regarded as work, at least in the case of elite athletes who receive grants.
- 5. In the Handbook on Disability Services of the National Institute for Health and Welfare, the Ministry of Social Affairs and Health should instruct the municipalities that persons with disabilities may need personal assistance, as referred to in the Act on Disability Services and Assistance, when participating in sports competitions, regardless of whether the competition takes place in Finland or abroad.

The UN Convention on the Rights of Persons with Disabilities (CRPD) imposes obligations on the State in all areas of life, including recreation, leisure and sport (Article 30). The Non-Discrimination Act (1325/2014) imposes on the authorities a duty to promote equality (Section 5). The prohibition of dis-crimination (Section 8) applies broadly to various actors. In addition, the obligation to provide reasonable accommodation to realise equality of persons with disabilities (Section 15) may apply, depending on the actor.

The Ombudsman considers it important that sports associations represent equality and create opportunities for various athletes and people who engage in physical activity. The promotion of non-discrimination takes place in everyday work, practice, competitions, sports facility construction projects, and other work done by the associations.



Ageism in the recruitment of special jaeger non-commissioned officers

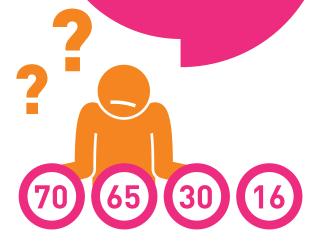
The Helsinki Court of Appeal sentenced the National Defence Forces for ageism in the recruitment of a special jaeger non-commissioned officer. The case concerned the question of whether an applicant was treated discriminatingly for not being selected for the temporary post of a special jaeger non-commissioned officer despite having the required qualifications. The applicant had previously worked in a similar position, but at the age of 33, they were not chosen for the position due to their age. The Court of Appeal requested a statement from the Non-Discrimination Ombudsman before making a decision.

The District Court had dismissed the discrimination complaint based for example on the EU Court of Justice preliminary ruling that an upper age limit of 30 was acceptable for the recruitment of fire rescue personnel.

In the statement given to the Court of Appeal, the Non-Discrimination Ombudsman questioned whether this preliminary ruling was, in its significant details, a suitable guideline for the case in question. Based on the preliminary ruling, age limits can be set in recruitments where coping with the tasks required by a job require exceptional physical ability and this goal cannot be achieved through means that would be less restricting on the non-discrimination of applicants. The EU Court of Justice preliminary ruling concerned a permanent position, in which case the age limit could be used to ensure that the recruited persons would be capable of coping long-term with demanding rescue operations. However, in the case of the recruitment of a special jaeger non-commissioned officer, the post was a temporary 5-year assignment. Additionally, the Non-Discrimination Ombudsman stated that age limits should be used consistently and transparently.

The Court of Appeal found that the tasks of a special jaeger non-commissioned officer required exceptional physical ability that could only be expected from a young person. However, the functionality of the special jaeger unit had been ensured through the use of fixed-term contracts and demanding physical tests. Additionally, the age criterion was not used consistently and system-

The Non-Discrimination Ombudsman stated that age limits should be used consistently and transparently.



atically. Therefore, the use of the age criterion was considered to have led to the discrimination of the applicant. The ruling of the Court of Appeal is valid.

#### **AGE AS DISCRIMINATION GROUND**

Cases of discrimination based on age are often related to age limits that have been set without justifiable grounds. Young people are not permitted access to self-service libraries or service stations, people over the age of 65 are not permitted responsible positions in associations, medical clinics terminate agreements with doctors over the age of 70 without individual evaluation, or students over the age of 30 are not given the same discounts as those under the age of 30. In some of the cases, discrimination has also occurred based on other reasons besides age, such as gender, disability, or origin. Age is one of the most common grounds for discrimination occurring in cases of multiple discrimination. For example, in the previously mentioned case concerning a discriminating algorithm, the credit applicant was discriminated against based on gender, mother tongue, place of residence, and age.

# Improved equality in military service through a comprehensive reform

In October 2015, a young man contacted the Office of the Non-Discrimination Ombudsman. He had refused non-military service based on pacifism. For this reason, he had, according to regular procedure, been sentenced to imprisonment. The man considered that he had been discriminated against in comparison to Jehova's Witnesses who are exempted from both military and non-military service under an exceptive act enacted in the 1980s on the grounds of religious conviction.

Acknowledging the discrepancy between this exceptive act and the Constitution of Finland of the 1990s, the Ombudsman decided to become the young man's legal adviser in order to defend him during the appeal process at the Helsinki Court of Appeal. A committee set by the Ministry of Defence in 2007 already stated that all conscientious objectors should be treated equally when compared to the treatment of the Jehova's Witnesses. However, the Government of Finland had not taken measures to update the legislation despite criticism from the Constitutional Law Committee and the UN Human Rights Committee. Because of this, the Non-Discrimination Ombudsman decided to pursue changes through this individual court case.

In February 2018, the Helsinki Court of Appeal released the young man with its ruling (18/108226), and in November 2018, the Supreme Court decided not to grant a leave to appeal in the matter (Dno 2018/286). The Non-Discrimination Ombudsman is very happy both with the result and with the Court of Appeal's justifications. The current legislation is unconstitutional and discriminating.

The Court of Appeal's ruling also activated the Government with regard to the matter. During spring 2019, the Parliament passed a law that removed special treatment from the Jehova's Witnesses. This law removed the discrepancy of the legislation in terms of equality and non-discrimination, but it is still not without its issues in terms of fundamental and human rights. The change in legislation did not remove the issue of so-called prisoners of conscience. A person who does not

find themselves able, due to religious or personal conviction, to participate in military or non-military service under the current system (e.g. the non-military service's connection to military service and the length of service) will in the future continue to be sentenced to imprisonment or probation.

In fact, the change in legislation will probably increase the number of prisoners of conscience, as some Jehova's Witnesses are also likely to become conscientious objectors. For this reason, the Ombudsman did not support the change. From the perspective of human rights, the Ombudsman finds it problematic that, out of European nations, only Greece and Finland uphold a system in which people refusing both military and non-military service are sentenced to imprisonment. A more positive change in terms of human rights would be to exempt all those who refuse service based on personal conviction.

#### THE GOAL IS TO ACHIEVE A COMPREHENSIVE RE-FORM AND A MORE EQUAL NON-MILITARY SERVICE

The Non-Discrimination Ombudsman finds that the current system of national defence, military service, and non-military service should be re-evaluated, and a comprehensive reform should be conducted to develop the system for example in the direction of the national service model. The current, internationally criticised situation involving prisoners of conscience could at least in part be affected by developing the system of military service towards a more generalised model of national service, one part of which would be military service.

In such a model, in which for example the current non-military service would be more clearly separated from military service, and the length of service would be more in keeping with the length of military service, current conscientious objectors would probably be more willing to participate in different forms of service. Such a new system, in which women's status in the service would also be re-evaluated and which would also take into account gender equality, would be the best alternative in terms of equal treatment of all citizens.

# More voices make for better media

The media are the watchdogs of society, but they also wield power. The power and responsibility of the media can be seen concretely in the choices made: which topics are handled, whose voices are heard, and which perspective the world is viewed from. Can the media help us understand one another, or will it promote antagonism? Is everyone given a chance to be heard, even minorities and those who are marginalised?

The media are tasked with mirroring society, describing reality, participating in public debate, and building the future. But whose reality are they describing, what kind of a world are they building, and what topics need to be discussed? The Non-Discrimination Ombudsman participated in organising a discussion at SuomiAreena 2018 on the power and responsibility of the media as well as on whose voices are heard in the media.

The discussion event was organised together with the

If a particular group is overrepresented in media, or if the media use stereo-types and only allow a small group of people to be heard, this creates an unrealistic picture.

Ateneum art museum, the Helsinki Deaconess Institute, and Moniheli ry.

Countless media studies, both Finnish and international, have shown that minorities are described in the media according to a certain pattern, mostly in the same roles: as villains, victims, or heroes, often as part of a



conflict. Strong juxtaposition and seeing the members of minority groups as the other, as outsiders, is a common perspective in media content related to minorities. This is true of both ethnic minorities and for example persons with disabilities. It is also common for the authorities or interest groups to speak on behalf of minorities. When minorities are allowed to speak for themselves, the topic is usually their status as a minority group. Very seldom are members of minorities interviewed for example as representatives of a particular profession, as users of a service, as residents of a municipality, or for example as eaters of ice cream in the summer.

Examples: In an article about a school, pupils are divided into young immigrants and regular young people. In the same article, a person with disabilities is seen as a threat if they live next door and as a victim because neighbours see them as a threat. The person is seen as helpless and unable to speak on their own behalf. A member of the Roma community is a hero if they are able to graduate primary school. If not, they are a criminal.

If a particular group is overrepresented in media, or if the media use stereotypes and only allow a small group of people to be heard, this creates an unrealistic picture. On the other hand, this is also a question of quality. One-sided reporting in the media creates a simplified message. Even if individual articles were factual, the whole does not mirror reality. More voices in the media promote a more equal society and increase participation. A person who can identify with what the media portrays will feel a part of society. The portrayal of the media can also increase feelings of being an outsider, which can increase the risk of social exclusion.

How can the media promote diversity? Naturally studies would provide different results if, for example, mentioning nationality was categorically excluded from crime reporting. An important and current point of view in itself. But the issue is not quite as simple as that. In some cases, reporting on a perpetrator's background is relevant, and it is a good thing that there is discussion on the topic. However, through promoting diversity the media can approach the problem of representation from another angle. If the media were to portray more diversity in their content, representation and reporting would become more balanced. This would naturally diminish the significance of crime reporting.



#### **FIVE TIPS FOR THE MEDIA:**

- Consider aspects of diversity when interviewing so called regular people. Could the family interviewed for a story about day care centres be representatives of a minority? Could the vote on the best ice cream flavour of the summer include a more diverse group of people?
- Look for new experts. Organise a day when you search for new experts and update your "people to call" lists. The Swedish Rättviseförmedlingen is a good example of how diverse a selection of experts can be found.
- Also keep a list of what kinds of people are allowed to represent certain groups in stories. Is the chair of the same association always called when a certain minority group is discussed? A new person can provide new perspectives.
- Change your perspective: From whose perspective is your story written? Does the story contain an "us versus them" juxtaposition? What group are you a member of?
- Think about the use of pictures. Who can be seen in the pictures? Do they uphold stereotypes? For example, are the members of minority groups portrayed as faceless?

# The National Rapporteur on Trafficking in Human Beings pays attention to the status and rights of victims

Victims of human trafficking are people in need of particular support. They often have difficulty in accessing the social and healthcare services they need. Victims of human trafficking are often in need of various different kinds or support simultaneously, but due to traumatic experiences, lack of language skills, or an otherwise difficult position, they are often unable to access the services they need. Due to their position and traumatic experiences, victims of human trafficking are often in need of a variety of services, including safe housing, family social work, psychological support, therapy services, and outreach social guidance.

The Non-Discrimination Ombudsman and the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) published a report in 2018 regarding the victims of human trafficking: *Tuntematon tulevaisuus – selvitys ihmiskaupan uhrien auttamista koskevan lainsäädännön toimivuudesta* (VN TEAS 24/2018). The purpose of the report was to ascertain whether the victims of human trafficking were able to access the services to which they have the right in accordance with international law, EU legislation, and Finnish national legislation. Assistance provided to victims of human trafficking is provided for in the Act on the reception of persons seeking international protection and recognising and helping trafficking victims (746/2011, hereafter Reception Act).

Based on the report, the Ombudsman recommended to the Parliament in a statement given during the same year that the current legislation should be clarified in order to ensure that the victims of human trafficking have access to required services, and that the instructions given by the state to social and healthcare workers and municipalities be improved. The central objective of changes to legislation and other development measures should be to ensure that the victims of human trafficking have access, in municipalities and under the upcoming regional governments, to the support they need and have the right to in order to help them recover.

The Parliament's Social Affairs and Health Committee responded to the statement in February 2019. The Com-

mittee stated that they find it important that the current legislation and the practices for recognising and providing services for the victims of human trafficking are re-evaluated. The Committee also stresses the importance of providing instructions to social and healthcare workers.

## HUMAN TRAFFICKING AS VIOLENCE AGAINST WOMEN

In 2018, the Non-Discrimination Ombudsman gave several statements regarding human trafficking as a form of violence against women. In these statements, the Ombudsman suggested that human trafficking in Finland be, more consistently than before, treated as violence against women, and that measures to prevent human trafficking and to reduce prostitution be included in the Government's equality policy and the action plans for preventing violence against women. The Ombudsman also suggested that earmarked funding be reserved for providing safe and supported housing for victims of human trafficking for example in connection to the current funding for safe houses, and that the impact of gender on measures against human trafficking be evaluated.

Additionally, the Ombudsman suggested in its statements that an evaluation be made whether Finland, in accordance with the obligations set by the Istanbul Convention and the recommendations of the CEDAW Committee, should create an official, independent authority to monitor and evaluate the measures for preventing violence against women and domestic violence as well as to make recommendations on the development on such measures and to improve the status and rights of victims of violence. The Human Rights Delegation has made a similar proposal. The Ombudsman also proposed the creation of such an independent authority in the statement provided for the report of the Ombudsman for Equality given to the Employment and Equality Committee of the Parliament.

The Ombudsman is one of the permanent experts of the Committee for combating violence against women and domestic violence (NAPE) affiliated with the Ministry of Social Affairs and Health.

The task of the Non-Discrimination Ombuds-man: Promoting the status and

rights of foreign nationals

In 2018, the Ombudsman prepared and approved a strategy for promoting the status and rights of foreign nationals, for reporting on human trafficking, and for monitoring removals from the country. The goal of the Ombudsman is to respond to increasing societal needs and to changes in the operating environment. The status of foreign nationals, especially asylum seekers, in Finland has worsened due to the impact of changes in legislation made since 2015. For example, challenges in the availability of competent legal counselling have led to more people contacting the Office of the Non-Discrimination Ombudsman.

In matters related to foreign nationals and human trafficking, the Non-Discrimination Ombudsman has extensive jurisdiction comprising various duties, supported by comprehensive rights to obtain information from authorities as well as good collaboration with civil society. Information obtained by the Ombudsman from different actors enables seeing the big picture on the impact of the changes to legislation in the realisation of the status and rights of foreign nationals and victims of human trafficking.

In keeping with its strategy with regard to matters related to foreign nationals and human trafficking, the Ombudsman aims to further for example the realisation of the societal goal that people in a vulnerable position are recognised by the authorities and that these people can be directed to receive the help they need. Monitoring removals from the country is also directed at people in a vulnerable position. Through its activities, the Ombudsman also aims to ensure that groups of foreign nationals and victims of human trafficking are treated equally by the authorities, that asylum seekers receive sufficient legal counselling during the asylum process, that the status and legal protection of people residing in the country without a residence permit is improved, that the victims of human trafficking are able to access the social and healthcare services they need, and that fundamental and human rights are respected when carrying out removals from the country.

With regard to matters related to foreign nationals and human trafficking, the Ombudsman aims to further the realisation of the societal goal that people in a vulnerable position are recognised by the authorities and that these people can be directed to receive the help they need.

The Ombudsman aims to strategically further the improvement of the status and the realisation of the rights of foreign nationals for example by using individual cases as grounds for improvements; by collaborating increasingly with other authorities in order so solve structural issues as well as to promote the fundamental and human rights of foreign nationals and victims of human trafficking; by better identifying situations related to foreign nationals where the Non-Discrimination Act can be applied; and by collecting and analysing information to further the influencing work of the Ombudsman. The Ombudsman also participates in public debate and publicly discusses observed points of development.

In order to reach societal goals and to make its activities more efficient, the Ombudsman develops its own work to blur the borders between different areas of jurisdiction, to strengthen teamwork, to increase interaction, and to improve communication. The Office of the Non-Discrimination Ombudsman has two administrative teams working on matters related to foreign nationals and human trafficking: the team for monitoring removals from the country and the team focusing on issues related to foreign nationals and human trafficking. Prioritising and sharing of work related to foreign nationals and human trafficking is done in collaboration with other teams. Collaboration also takes place with teams from other offices.

The Non-Discrimination Ombudsman was heard at the Helsinki Administrative Court in a case concerning the residence permit application of a Somali worker. It was impossible for the person to obtain the travel documents required for the application. Finnish authorities do not accept Somali passports as travel documents. The Ombudsman brought to the Administrative Court's attention that the Immigration Service's decision not to grant the person an alien's passport could be seen to lead to indirect discrimination based on nationality as provided for in Section 13 of the Non-Discrimination Act, which has led to an unreasonable result for the applicant. TE Services had, for their part, made a decision to grant the person a residence permit. The Ombudsman brought to the Administrative Court's attention two decisions made by the Supreme Administrative Court (KHO:2015:107 ja:2014:22) in which it had been stated that denying a residence permit in cases of family reunification based on the applicant not having or not being able to obtain the kind of travel documentation from the State of Somalia that Finnish authorities would accept imposed unreasonable restrictions on the applicant's rights.

REFUGEES' RIGHT TO A FAMILY LIFE

Numerous contacts being made to the Office of the Non-Discrimination Ombudsman led to the Ombudsman providing a statement in March 2018 on refugees' right to a family life and the precedence of the interests of children especially in matters related to asylum and residence permit processes. Based on international agreements on human rights as well as the statements of the Council of Europe Commissioner for Human Rights and the UN High Commissioner for Refugees, the Non-Discrimination Ombudsman found that political decision-makers, legislators and parties applying legislation on family reunification must ensure refugees' right to a family life more clearly than is currently the case.

The Ombudsman finds that refugees' right to family life is not adequately implemented in Finland, and the UN Convention on the Rights of the Child is not acknowledged appropriately. In particular, the income requirement prerequisite for the family reunification of persons receiving international protection provided for in 2016 is a problematic one. A three-month exemption to the requirement has been provided only for people who have been

The Non-Discrimination
Ombudsman found that political decision-makers, legislators and parties applying legislation on family reunification must ensure refugees' right to a family life more clearly than is currently the case.

granted asylum. However, both asylum seekers and persons applying for subsidiary protection have been interpreted to be in need of international protection in relation to their country of origin or permanent state of residence. Therefore, their differing treatment in terms of family reunification has no legally acceptable justification.

The income requirement is also problematic with respect to refugees' status, background and possibilities for earning an income. The requirement has a particularly negative impact on women, although employment opportunities for any persons having recently received international protection are scarce. The Ombudsman found that applying the income requirement in reality prevents family reunification and can lead to discrimination based on financial standing. In order to ensure the full realisation of refugees' family life and children's rights, the income requirement should not be applied to any persons receiving international protection, and family reunification through the practical work of authorities should be made easier.

The Non-Discrimination Ombudsman was heard at the Supreme Administrative Court in a case concerning the right for family reunification of a refugee with disabilities residing in Finland. The Ombudsman found that the income requirement imposed by the Immigrant Services on the person with disabilities was unreasonable. Exceptions to the income requirement should be observed in accordance with the Aliens Act, taking into account for example the UN Disability Convention to which Finland is bound, the case law of the European Court of Human Rights, as well as Section 22 of the Constitution of Finland, which obligates the authorities to interpret legislation in a manner that is favourable to human rights.

# Monitoring removal from the country: removal situations have become more challenging

In 2018, the Non-Discrimination Ombudsman monitored 70 cases of removal from the country, directed at 15 different target countries and in which 125 people were removed from Finland. 28 of them were women and 97 were men. About 20 % of those removed were children. In one of the operations, the monitoring person acted as a representative of the Frontex monitoring organisation in an operation in which 26 adult men were returned to Afghanistan from Sweden and Austria.

In recent years, the asylum process and particularly the decision-making process of Immigrant Services has received a lot of criticism. Immigrant Services have admitted to some mistakes and development needs in a report given to the Minister of the Interior in 2018 on the decision-making process and practices regarding asylum seekers.

In discussions related to removals from the country as well as the Ministry of the Interior strategies, issues related to the efficiency of removals from the country are highlighted. However, there are also some issues regarding human rights. International human rights bodies have often stated that removals from the country are extremely vulnerable to human rights violations. The concrete realisation of a removal from the country is a complicated process. In some cases, it may take a long time to ascertain the nationality of the person and whether the country in question is accepting returnees. For example, since autumn 2018, Iraq has only accepted a few forcibly removed citizens who have been guilty of crimes.

Complaints and applications made to the Supreme Administrative Court or to international supervisory bodies on the termination of a removal do not always



lead to the termination of the process. Some of the decisions become enforceable before the court has reached a final ruling. The risk of violating the principle of non-refoulement increases if people are removed from the country before their complaint has been processed.

The number of renewed asylum applications has increased, and measures have been taken because of it. In June 2019, a change in legislation will take effect to impose tightened processing of renewed applications. The reasons for the increase in renewed applications have not been investigated, but they are mainly seen to be made in order to delay or hinder removal from the country. The Ombudsman finds that the increase in the number or renewed applications is also a manifestation of issues in the asylum system.

Last year, the Non-Discrimination Ombudsman monitored six removals to Afghanistan and ten to Iraq. People monitoring removals from the country have observed that the people being removed have often feared returning, in particular those being returned to Afghanistan. Some of the people being removed had already escaped Afghanistan as children and had no knowledge of the country or the expected conditions. In general, it would seem to those monitoring the situation that removals from the country have become more difficult, resisting removal has increased. and this has led to increased use of force. Some Iraqis having been refused asylum return through voluntary return schemes, but hardly anyone returns to Afghanistan through voluntary supported return schemes despite having the choice. Undocumented residence in Finland may seem like the better option.

#### **CONCERN OVER THE FATE OF RETURNEES**

The Non-Discrimination Ombudsman is often contacted concerning removals from the country. The people contacting the Ombudsman have concerns over the fate of returnees. Uncertainty of the safety of returnees, especially those returned to Afghanistan and Iraq, causes concern. In regard to returns to Afghanistan, many still feel that the way the police operate in these situations is not sufficiently transparent. The Ombudsman is contacted when support persons or assistants are not able to contact people who have been apprehended by the police to await

removal. Based on the experiences of support persons, it is difficult for the returnees to keep in contact with their next of kin, and even the returnees are not provided with sufficiently clear information on when the removal is to take place. There are also concerns about matters of ensuring that the returnee's condition and health are sufficient for travel as well as issues of legal protection.

According to the instructions provided by the National Police Board in autumn 2018 for turning away and removing people from the country, the police are obligated to inform the returnee of the time of removal as soon as the information becomes available. In exceptional cases, the officer in charge of the investigation can make a decision not to inform the returnee of the time of removal if the police are in possession of facts that suggest this information may endanger the realisation of the removal. According to the instructions, a foreign national being removed from the country must be given the possibility to contact and meet next of kin or other persons whom they have the right to contact. According to the Non-Discrimination Ombudsman's representatives who have monitored removals from the country, the returnees are very rarely provided with the time of removal early enough. Especially returns to Afghanistan, which have caused more concern and attracted attention, are implemented in near secrecy. The people monitoring these removals have experience of similar removals from Sweden, where the police act much more openly for example in the case of removals to Afghanistan. The returnees have been informed of the time of removal well in advance and thus they have been able to meet and say goodbye to their next of kin and pack without hurry. The time of removal should not come as a surprise to the returnees or their next of kin.

Due to the unstable situation in Afghanistan, only healthy young men who are able to work are currently being returned. In its report to the Parliament in 2018, the Non-Discrimination Ombudsman recommended that returns to Afghanistan be terminated until the situation in the country improves. Taking into account the safety situation in Afghanistan, there is a risk that the principle of non-refoulement is being violated in these returns. Supreme courts have also paid attention to the risk of violating this principle in returning people to countries in crisis. The Supreme Administrative Court, in its ruling (2018:94), expressed an opinion on the possibility of internal protection in Afghanistan. The court noted the weakened security situation of the Shi'a and Hazara communities and stated that members of these groups cannot reasonably be expected to be able to reside in Kabul. Because of this, these persons do not have the possibility to receive internal protection as provided for in Section 88e of the Aliens Act if returned to Kabul, and thus they should be granted asylum.

The European Court of Human Rights is currently processing a complaint related to Finland in a case concerning a person having sought and been refused asylum in Finland. The person had returned to Iraq and had been killed shortly thereafter.

The asylum process should always take into account the principle of non-refoulement. The principle of non-refoulement is stated for example in the Aliens Act, the Constitution of Finland, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. All authorities, decision-makers at the Immigrant Services and those in administrative courts are bound by this principle. According to the Aliens Act, no one may be refused entry and sent back or deported to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity or from where he or she could be sent to such an area. The principle of non-refoulement must therefore be observed in situations where a foreign national is being refused entry after having been refused a residence permit or asylum or when a person is being removed from the country for example after having committed a crime.

Taking into account the safety situation in Afghanistan, there is a risk that the principle of non-refoulement is being violated in these returns.

The police are responsible for escorting foreign nationals who are to be removed from the country. If the risk of violating the principle of non-refoulement were to present itself during a removal situation, the police are responsible for making the call and acting accordingly. For this reason, the police and the immigration authorities should consider methods for how the police can, in a removal situation, evaluate whether the principle of non-refoulement is being violated.

## WHAT HAPPENS TO PEOPLE WHO ARE REMOVED FROM FINLAND AFTER THEY HAVE BEEN PLACED IN THE CUSTODY OF THE AUTHORITIES OF THEIR **HOME COUNTRY?**

In European public debate related to removals from the country, attention is paid to the importance of follow-up after the removal. It is especially important for decision-makers to obtain information on the situation of the returnees in order to ensure that refusing them asylum is not violating the principle of non-refoulement. At the moment, there is no system for follow-up after removals from the country. The wish is often expressed that those monitoring removals from the country could also monitor the situation in the target country after returns. However, the monitoring parties do not have jurisdiction in the foreign country, nor do they have the right to obtain information or a possibility for observing the situation of the returnees after they have been placed in the custody of the authorities of the receiving country. Additionally, the safety situation in some countries is so bad that escorts and monitoring parties may be forced to leave the country directly after placing the returnee in the custody of local authorities.

#### **NON-REFOULEMENT**

The concluding observations of the Committee Against Torture (CAT) on the seventh periodic report of Finland on November 29, 2016

#### **NON-REFOULEMENT**

12. While taking note of the nearly tenfold increase in the number of asylum applications in the State party over the past year and the increase in the refugee recognition rate, the Committee is concerned that recent changes in legislation and practice may have reduced legal safeguards for asylum seekers and increased the risk of refoulement. It is concerned about the abolishment of "humanitarian protection" as a national protection category and about restrictions on legal aid for asylum seekers. It is also concerned that the acceleration of status determination procedures may result in a person's speedy removal from the country, giving the person affected a maximum of seven days to apply for an enforcement ban while an appeal on a negative decision is being considered in court, and may not have an automatic suspensive effect. The Committee is also concerned that asylum seekers who are victims of torture may not be effectively identified and that asylum seekers continue to be detained, in particular pending their removal from the country. Moreover, it is concerned about the absence of statistics regarding the number of asylum seekers and undocumented immigrants held in detention facilities run by the police and the Finnish Border Guard (arts. 2, 3 and 16).

#### 13. The State party should:

- a) Take effective legislative, judicial and administrative measures in order to maintain the high quality of refugee status determination procedures while complying with its obligations regarding non-refoulement under article 3 of the Convention;
- b) Ensure that all asylum requests are evaluated on an individual, case-by-case basis, that legal aid is available to asylum seekers during all stages of the proceedings, that asylum seekers have an effective right to appeal negative decisions and that legislation that deals with the deportation of foreign citizens allows for appeals to courts against deportation orders to have a suspensive effect;
- c) Ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture;
- **d)** Ensure screening for mental health disorders and other consequences of torture-related trauma and provide support, appropriate specialized treatment and rehabilitation to all asylum seekers who are victims of torture

# Personnel at the Non-Discrimination Ombudsman's office

The following people have worked at the Office of the Non-Discrimination Ombudsman during 2018, either in permanent positions, in temporary positions, or as trainees.

Non-Discrimination Ombudsman Kirsi Pimiä Head of Office Rainer Hiltunen Senior Adviser Robin Harms

Senior Officer Jussi Aaltonen
Special Planning Officer Päivi Al-Tameemi

Trainee Minna Jokela

Senior Officer Päivi Keskitalo

Senior Officer Maija Koskenoja

Senior Officer Pasi Koskinen

Senior Officer Pirjo Kruskopf

Senior Officer Heidi Lempiö

Department Secretary Elena Leinonen

Department Secretary Miia Mäkelä

Communications Trainee Mirka Mokko

Trainee Merilii Mykkänen

Senior Officer Merja Nuutinen

Communications Assistant/Officer Paula Palin

Trainee Hekma Peltonen

Communications Assistant Heidi Sipilä

Senior Officer Venla Roth

Senior Officer Joonas Rundgren

Senior Officer Aija Salo

Senior Officer Pamela Sarasmo

Communications Officer Maria Swanljung

Researcher Toni Tuomi

Senior Officer Tiina Valonen

Senior Officer Anni Valovirta

Planning Officer Massimo Zanasi

# TOGETHER

for non-discrimination!

