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**NON-DISCRIMINATION**

## OMBUDSMAN

YHDENVERTAISUUSVALTUUTETTU

DISKRIMINERINGSOMBUDSMANNEN

OVTTAVEARDÁSAŠVUODÁÁITTARDEADDJI

Committee on the Elimination of Racial Discrimination

**Submission of the Non-Discrimination Ombudsman in relation to the twenty-third periodic report of Finland**

The Non-Discrimination Ombudsman would respectfully like to submit additional information to the Committee regarding Finland's twenty-third periodic report in particular issues relating to her mandate.

**Article 2 New Non-Discrimination Act (*paras 26-33 in the Gvt report*)**

The new Non-Discrimination Act (1325/2014) entered into force on 1 January 2015 and a new Non-Discrimination Ombudsman took office in May 2015 for a five year mandate. The Non-Discrimination Ombudsman is an independent and autonomous authority whose core tasks are to advance equality in Finland and to prevent and tackle discrimination.

The new legislation provides stronger obligations to promote equality and the new grounds for discrimination created a significant improvement in the observance of fundamental rights in Finland. The Act clearly expanded the authority of the Non-Discrimination Ombudsman to intervene in cases of discrimination.

However, one of the weaknesses of the Act is that the consequences of discrimination vary, depending on who is guilty of discriminatory act. The victims of discrimination have the right to financial compensation only if the perpetrator is an authority, employer, training provider, or the provider of goods or services. Another major constraint is that compensation must be claimed through general courts; the National Non-Discrimination and Equality Tribunal (Board) cannot order any compensation to be paid. According to the Constitutional Law Committee (PeVL 31/2014 vp), the Tribunal's mandate to order compensation should be reviewed. Claiming compensation via general court proceedings places the discrimination victim at high risk of having to pay the adversary's legal costs, which could amount to thousands or even tens of thousands of euros, if the victim loses the court case.

In addition it must be noted that neither the Non-Discrimination Ombudsman nor the Non-Discrimination and Equality Tribunal (Board) has mandate over discrimination in the field of employment, but this is a task of the occupational health and safety authorities. It follows that the remedies available to individual subjected to discrimination in the field of employment and the individual subjected to discrimination elsewhere varies to some extent, as the Non-Discrimination Act contains special tasks for the Ombudsman to tackle discrimination, which are not foreseen for the occupational health and safety authorities.

In the statements issued to courts of law and prosecutors in 2015, the Non-Discrimination Ombudsman paid particular attention to the amount of compensation paid by virtue of the Non-Discrimination Act. The sanctions imposed under the previous legal praxis were not effective or proportionate and did not provide an effective deterrent. Little legal praxis has been formed in relation to the new Non-Discrimination Act, but expectations are high that sanctions would be more effective in the future.

The Non-Discrimination Act has unfortunately had very little or no impact on hardened attitudes in society, which is reflected in the greater number of violations against the safety and personal integrity of people belonging to minorities despite of the fact that the new Act prohibits discrimination and harassment also between private persons.

In addition to discrimination, the Ombudsman has a long tradition of responding to hate speech against various minorities and this tradition has been continued under the new mandate. In 2015, the number of asylum seekers arriving in Finland, as in many other countries, was significantly higher than in previous years. This intensified various forms of overreaction, including hate speech. In addition to asylum seekers, hate speech was directed towards people helping them and also national Finnish ethnic minorities. However, intervening in hate speech began to gain more supporters during the year and continuous efforts have been made also by the Non-Discrimination Ombudsman to raise awareness to combat hate speech and hate motivated crimes.

As a part of promotion of non-discrimination, the new Non-Discrimination Act extended the obligation to draw up an equality plan in such a manner that the de facto realisation of equality must be assessed and implemented with regard to all prohibited grounds for discrimination mentioned in the Act. The obligation to draw up such a plan previously applied only to authorities and education providers, and only included ethnic origin out of the discrimination grounds. Equality plans must now cover all prohibited grounds for discrimination and must be drawn up by all workplaces employing more than 30 people. The deadline to finalize the equality plans was by 1 January 2017. By virtue of the information received by the Ombudsman, it appears that fulfilling of this obligation in due time has been somewhat challenging.

## **Article 5 b) Right to Personal Security and Protection against Violence**

### *Victims of Human Trafficking (paras 134-135)*

The Non-Discrimination Ombudsman is mandated also to perform the tasks of the National Rapporteur on Trafficking in Human Beings.

The National Rapporteur has pointed out in her evidence-based report to the Parliament in 2014 that the cases of sexual exploitation with characteristics of human trafficking are mainly treated in investigation, prosecution and conviction

as procuring offences. The Rapporteur considered that the action against human trafficking tends to focus on combatting of crimes and on immigration control, which potentially has a negative impact on the implementation of victims' rights.

The National Rapporteur is currently conducting a study on the victim identification and assistance. The National Rapporteur examines whether the current legislation and its application are in line with the binding international obligations and what kind of restrictions the legislation and its application pose to the implementation of the victims' rights in practice (such as equal treatment in providing services). One of the research questions relates to the connection of victim identification on one hand and assistance to the criminal proceedings on the other hand, which has been criticized by many NGOs for being too strictly applied. The study will be finalized and issued to the Government by March 2018.

In September 2016, the National Rapporteur published a study on women of Nigerian origin who have been subjected to trafficking for sexual exploitation in Italy. The purpose of the study was to examine how victims of human trafficking have been treated in the asylum and residence permit process in Finland. The National Rapporteur concluded that the application of the Aliens Act is in part unpredictable and inconsistent and that Finland strikes as being negligent of its binding human rights obligations under international law as regards victims of trafficking when it refuses their entry without assessing at an individual level the risk of re-trafficking.

The National Rapporteur recommended, among others, the Immigration Service to draw up guidelines for international protection and the processing of residence permit applications of trafficking victims. The Rapporteur also recommended to carry out an individual risk assessment for each victim and to use practical measures to ensure that the victims and their children receive *de facto* assistance in the receiving country when the entry in Finland is refused. The National Rapporteur also recommended to amend the Aliens Act.

Following the publication of the study the Immigration Service conducted a fact-finding mission to Italy. As a result of the information acquired during the mission, the Immigration Service assured that it will consider the refusal of entry and returning to Italy of victims of human trafficking more carefully and individually.

## Article 5 c) Other Civil Rights

### *Rapid growth in the number of asylum seekers (paras. 141-144)*

The Non-Discrimination Ombudsman has a special status mentioned in the Aliens Act (301/2004) as an authority who has the right to be informed and to be heard in matters concerning asylum seekers as well as deportations of aliens.

As mentioned in the Government's report, the number of asylum seekers has grown rapidly and substantially in particular during 2015. The new situation has warranted some legislative and practical changes which are detrimental to asylum seekers' rights.

The legislative amendments include tightening the family reunification criteria by setting the requirement for sufficient resources by the sponsor relatively high, including for children applicants. The deadline for appeal in asylum matters was shortened from 30 days to 21 days regarding appeal to the Administrative Court

and from 30 days to 14 days regarding request for leave to appeal from the Supreme Administrative Court.

Free legal aid in first instance was restricted only to vulnerable applicants, while it used to be available for all. In addition the right to choose legal representation was restricted to public defenders in first instance, who are not necessarily specialized in asylum law. Also the amount of paid legal aid was restricted.

Furthermore, the former category of humanitarian protection was repealed from the law and the practice to issue a temporary residence permit to those aliens whose asylum applications were not successful, but who cannot be returned to their country of origin, was restricted. Formerly these residence permits were issued for a short period of time at least if the failed asylum seeker could not return or be deported (either for health or technical reasons). Currently these permits are issued very exceptionally. In practice these changes together with the tighten standards to accept claims for international protection have led to increased number of migrants in irregular situation.

The increased number of asylum applicants has led to substantial new recruitments by the Immigration Service and the Administrative Courts. The pressure of the backlog, newly recruited inexperienced staff and the lack of sufficient number of translators to meet the demand has raised some concerns regarding the accuracy of the process.

The Non-Discrimination Ombudsman is concerned of these developments in general and their negative impact on the rights of asylum seekers. Particular concern of the Ombudsman relates to the ability of the authorities in the current situation to recognize the asylum seekers in most vulnerable situation (*i.e.* unaccompanied children, victims of torture or human trafficking, LGBTI applicants) and to respond adequately to their special needs.

#### *Non-Discrimination Ombudsman as the Supervisor of Aliens Rights (para 149)*

According to Article 8 of the so called EU Return Directive (2008/115/EC), the Member States must ensure an effective monitoring system of forced returns. As mentioned in the Government's report, the Non-Discrimination Ombudsman has been mandated also to supervise the enforcement of removal orders of foreigners in accordance with the said Directive.

The new task of the Ombudsman entered into force on 1 January 2014, however no resources to perform this additional task was allocated to the Ombudsman's office until February 2017 when a temporary post was created until the end of the year 2017. So far the supervisory task of forced returns has been performed under EU project funding.

## **Article 5 e) Economic, Social and Cultural Rights**

### *Education in Sámi languages (paras 166-177) and situation of the Sámi in general*

The Non-Discrimination Ombudsman is concerned of the right of the Sámi people to participate effectively in the decision-making processes as regards to matters that affect them directly. It appears that recently there have been some challenges by the Ministries preparing legislation or conventions that affect the

Sámi, to include them in the process in due time and to proactively promote the exercise of their rights.

Also, the linguistic rights of the Sámi children do not always materialize in full even in their homeland. It appears that the some municipalities interpret and apply the law regarding education in Sámi language narrowly. When it comes to the linguistic and cultural rights of the Sámi children, the Non-Discrimination Ombudsman considers, in general, that the focus should be in the holistic approach and overall support to the identity and linguistic and cultural rights in accordance with the national pedagogical plans instead of just providing the minimum level of teaching in Sámi.

The Ombudsman sees it important that education of Sámi language and in Sámi language (whenever possible) would be provided to greater extent to Sámi children also outside the Sámi homeland.

#### *Health Care Services for Paperless Persons (paras 187-191)*

The Non-Discrimination Ombudsman is concerned of the growing number of persons in irregular situation and the different approach taken by the various municipalities involved as to which services should be provided for the undocumented people.

## **Article 6 Legal Remedies in Discrimination Matters**

As mentioned under Article 2 concerning the New Non-Discrimination Act, the victim of discrimination has several avenues to seek redress depending on the nature of the case, but the system containing multiple actors may appear somewhat complicated to individuals. It also makes the collecting and analyzing statistical data on discrimination more complex.

The number of complaints filed with the Non-Discrimination Ombudsman in 2015 increased by 73 per cent, compared to those filed with the former competent authority, the Ombudsman for Minorities, in 2014.

In 2015 the Non-Discrimination Ombudsman handled 884 cases out of which 496 were classified as discrimination complaints. 203 of those cases concerned discrimination on grounds of ethnicity or origin.

In 2016 the increase continued with 1045 new registered contacts, out of which 891 were classified as discrimination cases. This is partly due to the new mandate of the Ombudsman and the awareness by the public. 212 examined cases in 2016 concerned discrimination based on ethnicity or origin.

The Non-Discrimination Ombudsman

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