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Statement of the Finnish Non-Discrimination Ombudsman to the UN Committee on the Elimination of Racial Discrimination for the Consideration of the State Report of Finland

The Non-Discrimination Ombudsman is an autonomous and independent authority. The task of the Ombudsman is to promote equality and prevent discrimination. The Ombudsman also supervises removal from the country and is the National Rapporteur on Trafficking in Human Beings as well as the National Rapporteur on Violence against Women. The Ombudsman further works towards improving the rights and status of foreign nationals and monitors fundamental rights compliance in screening and border procedures.¹ In this Statement, the Ombudsman focuses on his observations concerning promoting the rights and status of foreign nationals.

Combined impact of legislative changes to the rights and status of migrants

One of the themes that the UN Committee on the Elimination of Racial Discrimination has chosen for the hearing of the Finnish Government is the recent or proposed legislative changes affecting non-citizens. In the last few years, the rights of foreign nationals and their status in Finland have been materially weakened. Instead of overhauling the Aliens Act, legislation has been changed through several smaller amendments. The reforms have been implemented in a fragmentary manner, without sufficiently assessing the impact of the simultaneous, overlapping and consecutive amendments to the realisation of fundamental and human rights. The Aliens Act is now more convoluted than before, and the compounding effects of the amendments are hard to predict.

The Non-Discrimination Ombudsman is particularly concerned of the potential impact of the legislative changes on vulnerable persons, such as children, victims of

¹ [Our work | Non-Discrimination Ombudsman \(yhdenvertaisuusvaltuutettu.fi\)](https://www.yhdenvertaisuusvaltuutettu.fi/en/our-work/non-discrimination-ombudsman)

human trafficking and gender-based violence, undocumented migrants and persons with need for international protection.

One of the affected groups is people who have been granted international protection. The duration of residence permits granted based on international protection has been shortened, while the period of residence required to obtain citizenship has been doubled and also the period of residence required for a permanent residence permit has been lengthened. As residence permits become shorter in duration and acquiring permanent residence or citizenship takes considerably longer than before, people's stay in the country becomes more uncertain which can cause stress and make sustainable integration more difficult.

Both citizenship and permanent residence permit requirements have also been amended to require that the person has not received social assistance or unemployment benefits (or, in the case of permanent residence permits, otherwise been absent from work), for more than a total of three months during the past two years. These new income-related requirements concerning permanent residence permits and citizenship are not limited only to those who have moved to Finland on an employee's residence permit; they apply equally to refugees, victims of human trafficking, and other people in vulnerable situations. The Non-Discrimination Ombudsman is concerned that the new requirements place people whose vulnerable position make it difficult to find employment in a particularly challenging position.

In addition, requirements for family reunification have also been amended and made stricter, particularly for persons granted international protection. New requirements include, for example, a requirement to reside in Finland for two years before family reunification can take place in cases where the sponsor has received subsidiary protection.

The Ombudsman considers these legislative changes to be short-sighted: they significantly undermine the integration and well-being of people living in Finland, restrict the right to family life, and do not produce positive outcomes either from a societal or a humanitarian perspective. The changes can in practice have a particular impact on persons in a vulnerable position and recipients of protection statuses.

Changes concerning the asylum procedure

The new European Pact on Asylum and Migration has been implemented in Finland. Through the implementation, the asylum procedure will considerably change in Finland. For example, it is likely that the use of faster procedures will significantly

increase, through the larger use of expedited and border procedures. At the same time, the Government decided to weaken the right to legal representation during the first-instance assessment of the asylum application to essential measures, instead of the previous broader category of needed measures. EU legislation does not require such a restriction of legal aid; rather, it is a national policy choice.

Limiting legal aid is particularly significant in light of the faster procedures and the, in some cases, very short appeal deadlines. It may make it more difficult to establish the grounds for an asylum claim, and factors related to an applicant's vulnerability may go unnoticed and therefore only come to light during the appeal stage. Ensuring that relevant matters are properly addressed at an early stage of the process shortens the overall duration of asylum procedures. It reduces the number of appeals, applications returned to the Finnish Immigration Service for reconsideration, and subsequent applications.

There is experience of how previous reductions in the legal safeguards to asylum-seekers have affected the efficiency of asylum procedures. For example, a report studying the overall impact of legislative changes between 2015 and 2019 showed that the restrictions imposed in 2016 on legal aid and appeal deadlines did not improve efficiency; on the contrary, they had the opposite effect, for example through increased appeals and subsequent applications.² Most of the changes introduced in 2016 were repealed in 2021. For this reason, the current restriction on legal aid should likewise be reassessed from the perspective of ensuring a good quality of the asylum procedure as well as promoting asylum-seekers' protection under the law.

The Act on Temporary Measures to Combat Instrumentalised Migration

In the list of themes for the hearing of the Finnish Government, the UN Committee on the Elimination of Racial Discrimination has mentioned the Act on Temporary Measures to Combat Instrumentalised Migration. According to said Act, the Government may decide to restrict the reception of applications for international protection when certain conditions are met. In this situation, instrumentalized migrants in certain areas would be prevented from entering the country or removed from the country without delay and guided to move to a place where applications for international protection are received. There are two possibilities to derogate from the removal from country: if this is essential for safeguarding the rights of a child, a

² Pirjatanniemi, E., Lilja, I., Helminen, M. Vainio, K. Lepola, O. & Alvesalo-Kuusi, A. 2021. Ulkomaalaislain ja sen soveltamis-käytännön muutosten yhteisvaikutukset kansainvälistä suojelua hakeneiden ja saaneiden asemaan, VN TEAS 2021:10.

person with disabilities or another person in a particularly vulnerable position; or if there are circumstances which make it evident that the person faces a real risk of being subjected to the death penalty, torture or other treatment violating human dignity primarily in the state from which the person has arrived in Finland. The possibility to apply these derogations would be assessed in a short summary interaction between the person wishing to seek asylum and the border guard, and the summary assessment would not result in an administrative decision that could be formally appealed.

The Constitutional Law Committee of the Parliament, which is responsible for assessing whether government proposals are in line with the constitution and international agreements, stated that it is already obvious from what is stated in the Government's proposal that the regulation is in conflict with the unconditionality of the prohibition of non-refoulement. In the opinion of the Constitutional Law Committee, the regulation is incompatible with Finland's international human rights obligations. However, the Committee approved the legislation as a derogation from the Finnish Constitution and fundamental and human rights. The Committee held that it is important that the derogation from international human rights obligations can be regarded as timely, geographically and substantially restricted, and that human rights obligations remain fully in force outside the limited scope of application of the law.³

The Non-Discrimination Ombudsman considers the Act to be in clear contradiction with, for example, the principle of nonrefoulement, the prohibition of collective expulsion and access to effective remedies. Similarly, the Council of Europe High Commissioner for Human Rights, upon visiting Finland in September 2024, stated that “the Commissioner remains of the view that the temporary measures, if ever implemented, would entail a violation of several international obligations, including the principle of nonrefoulement, the prohibition of collective expulsion and access to effective remedies.”⁴

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³ PeVL 26/2024 vp.

⁴ Commissioner for Human Rights of the Council of Europe Michael O’Flaherty, Statement Following his Visit to Finland from 23 September to 26 September 2024. CommHR(2024)40.

