## RE : Questionnaire to NHRIs on the right of persons with disabilities to social protection

Mandate of the Special Rapporteur on

the Rights of Persons with Disabilities 2535/9C/2015 29/05/2015
Groups and Accountability Section
Special Procedures Branch
Office of the United Nations High Commissioner

for Human Rights

BY EMAIL to sr.disability@ohchr.org

**Diary number**

**Date**

**Contribution from the Finnish NHRI/Human Rights Centre**

The Human Rights Centre (HRC) would like to thank the Special Rapporteur on the rights of persons with disabilities for the possibility to provide information concerning the right of persons with disabilities to social protection in Finland.

The Human Rights Centre, its Delegation and the Office of the Parliamentary Ombudsman together form Finland’s National Human Rights Institution. The institution was accredited with the highest A-status by the International Coordinating Committee of National Human Rights Institutions in December 2014. According to legislation, one of the tasks of the HRC is to participate in European and international cooperation related to the promotion and protection of fundamental and human rights. The HRC generally represents the Finnish NHRI in international NHRI cooperation.

In addition to the legislative framework and Government policies, this statement presents some of the shortcomings concerning the rights of persons with disabilities to social protection that the Parliamentary Ombudsman and Deputy Ombudsmen discovered in 2014.

### LEGISLATIVE FRAMEWORK

In Finnish legislation, disability is defined in different ways in different laws and situations. In the Act **on** Services **and Assistance for the** Disabled (Disability Services Act**,** 380/1987), a disabled person is defined as a person who has long-term specific difficulties with his or her normal life due to a disability or disorder. Municipalities are responsible for providing services for disabled persons according to the Disability Services Act.

Non-discrimination legislation

The **revised Non-Discrimination Act entered** into force in 1.1.2015. The Act is applied to all public and private activities, excluding private life, family life and practice of religion. The protection against discrimination is equal regardless of whether the discrimination is based on ethnic origin, age, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics, with some exceptions. The obligation to promote equality applies to both public authorities and education providers, educational institutes and employers.

According to the Act, public authorities, education providers and employers must, where necessary, make **reasonable accommodations** to ensure that employees with disabilities have equal access to goods and services, work or education and training. The disability of a person must be taken into account in provision of services, for example, by arranging accessible passage for those who need it whenever possible. Employers were already under the former legislation obliged to make reasonable accommodations, but for providers of goods and services, such as hotels, restaurants and retailers, this is a new obligation. **According to the Act, the denial of reasonable accommodations is a discriminatory practice.**

The new **Non-Discrimination Ombudsman** has a mandate to supervise compliance with the Act with regard to all grounds of discrimination. The **National Discrimination Tribunal and the Equality Board were merged** and the new Tribunal covers all discrimination grounds. Compliance with the provisions on equality in working life in individual cases will continue to be supervised by the occupational safety authorities. However, the Non-Discrimination Ombudsman has some powers relating to equality in working life.

The Act has been hailed for extending the protection against discrimination and incorporating a comprehensive list of illegitimate discrimination grounds into legislation. **Nevertheless, the Act has also faced criticism.** The Non-Discrimination Ombudsman and the new Non-Discrimination and Equality Tribunal still have only **limited mandates to tackle discrimination in working life.** In addition, **the Act still allows for discrimination in certain situations,** and these provisions have been considered unclear. For example, discrimination on the grounds of age and place of residence is still legal if the discrimination is based on employment policy or labour market objectives. According to the Act, unequal treatment should always be based on law. However, such treatment is allowed in situations for which there is no legislation if the treatment has acceptable grounds and an objective based on fundamental and human rights and if the means to achieve the objective are in proportion.

Ratification process of the CRPD

On 4 December 2014, the Government submitted to the Parliament a **Government Bill (284/2014) on the ratification of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention.** The Parliament accepted the ratification of the Convention on 3 March 2015. According to the decision by the Parliament, the ratification will not be finalised until national legislation has been amended so that it is consistent with the Convention. The final ratification depends on the adoption of the Act on the Right to Self-Determination (Government Bill for an Act on strengthening the right to self-determination of clients in social welfare and health care, on conditions for the use of restrictive measures and for other related acts, 108/2014). **The Government has been widely criticised for the delays in the ratification process.** However, according to Finnish policy, before an international convention can be ratified, national legislation has to be in line with the convention.

### POLICIES PROMOTING AND PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES

The disability policy of the Finnish Government sees disability as **a condition caused by the interaction between environmental barriers and the individual**. The principles of Finnish policy concerning people with disabilities are the rights to equality, participation, necessary services and support. According to legislation, municipalities are mainly responsible for disability services. People with disabilities should be provided with a **personal service plan** on their individual services. Policies aim to support the working and functional capacity of people with disabilities and their individual autonomy. Municipally organised services and support should enable people with disabilities to cope with every-day life.

**The National Council on Disability (VANE)** functions as a national co-operative body for authorities, disabled people's organisations and organisations for relatives of disabled people. It follows political decision-making, gives statements and promotes the implementation of human rights of disabled persons.

**Finland’s Disability Policy** (VAMPO) for 2010–2015 laid out the basis for the inclusion and equality of disabled persons. Through the policy, the Government wished to ensure the equal status of persons with disabilities and address shortcomings in the realisation of rights of persons with disabilities by implementing concrete corrective and development measures. The objectives of the policy were the following:

1. The legislative amendments necessitated by the ratification of the UN Convention on the Rights of Persons with Disabilities will be prepared and implemented;

2. The socioeconomic status of persons with disabilities and combating poverty will be improved;

3. The availability and high quality of special services and support measures will be ensured across the country;

4. Accessibility in society will be strengthened and increased; and

5. Disability research will be reinforced, the information base improved and diversified high-quality methods developed in support of disability policy and monitoring.

The policy included both short and long-term measures that aimed at developing all relevant policy sectors from the perspective of the rights, freedoms and equal opportunities of persons with disabilities. It also recognised the need to make amendments to existing legislation. In addition, implementation of the policy was seen to require education, information, extensive improvements, development of financing and structures, updating of concepts as well as strengthening the knowledge base in support of the implementation and monitoring of disability policy. Some of the measures were considered to require an increase in financial resources in order to be implemented. However, the basic principle of the policy was that the measures should be implemented in line with the Government decision on spending limits and within the budget. According to the policy, the future objectives of disability policy are sustainability, diversified society, preventing discrimination and reinforcing accessibility in the Finnish society.

### DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

Persons with disabilities have a higher risk to be discriminated against than other people. In addition, especially disabled women and girls, disabled immigrants and disabled persons belonging to language, cultural, sexual or gender minorities face multiple discrimination.

According to the 2012 Eurobarometer 42 % percent of Finnish citizens (compared to 46 % of all EU citizens) estimated that discrimination based on disability is widespread in their home country.[[1]](#footnote-1) Disabled children and the youth encounter discrimination in schools. According to a survey published by the Ministry of the Interior on discrimination experienced by children and young people in 2010, young people with disabilities, long-term illnesses and youth belonging to sexual and gender minorities are more prone to discrimination than other young people. [[2]](#footnote-2)

In 2013, the Ministry of the Interior published a survey about the accessibility and effects of legal remedies for victims of discrimination. In most cases the victims of discrimination had not complained about their treatment to the authorities. Since many disabled persons do not have the possibility to defend their rights, the responsibility to contact the authorities often lies with family members, friends and organisations. Some persons with disabilities are reluctant to complain about their treatment, possibly fearing stigmatization or other consequences. Disabled persons often face continuous discrimination in working life and recruitment processes, access to services and public transportation.[[3]](#footnote-3) In addition, persons with disabilities can face violence and abuse. In 2012, 2.2 % of hate crimes reported to the police targeted disabled persons.[[4]](#footnote-4)

RIGHTS OF PERSONS WITH DISABILITIES IN THE WORK OF THE FINNISH NHRI**[[5]](#footnote-5)**

The Government Bill on the ratification of the CRPD stipulates that the independent mechanism according to article 33(2), responsible for promoting, protecting and monitoring the national implementation of the Convention, will be formed by the Parliamentary Ombudsman, Human Rights Centre and its Delegation, i.e. the Finnish NHRI. **This is the first statutory duty that will be assigned to the NHRI as one entity.** The NHRI is already preparing for its upcoming new duties under the Convention.

The Human Rights Delegation of the Human Rights Centre has disabled persons as members. These members already fully participate in the work of the NHRI and in the planning of the duties to be assigned to the NHRI according to article 33(2) of the CRPD.

The Parliamentary Ombudsman has a strong fundamental and human rights mandate and the Ombudsman’s office promotes the realization of rights through examining complaints, launching own initiatives and conducting inspections. Rights of persons with disabilities was selected by the Office of the Ombudsman as its theme for 2014 and 2015. According to the Ombudsman’s annual report for 2014, **the rights of persons with disabilities are not always guaranteed by authorities and other actors performing a public task. Specific problems are related to, for example, the right to equal participation, accessibility and access to services**.

**In 2014, the Ombudsman and the two Deputy Ombudsmen made a total of 161 decisions on cases that concerned the rights of persons with disabilities[[6]](#footnote-6)**, along with one own initiative. 67 (41 %) of these complaints resulted in some kind of action. Cases concerning the rights of persons with disabilities led to action more often than other cases. Seven complaints led to an official reprimand. In 39 cases, a view on the matter was expressed and 19 cases resulted in other action.

Many complaints dealt with **social services and social insurance**. Complaints related to services guaranteed by the Disability Services Act dealt with, inter alia, the right to receive a formal decision on service provision, fees, inappropriate treatment in customer service, delays in the processing of applications, transportation services, and being denied personal assistance.

Many complaints were made about delays in the processing of applications and lack of due process. According to legislation, decisions concerning services and support should be made without unnecessary delay and no later than three months after application. An official reprimand was given to a municipality after the family of a severely disabled child had not been properly advised about supplementing their application for transportation services so that a decision could have been made without delay. In another case, the authorities had delayed in the implementation of a decision on disability services concerning necessary financial support for a severely disabled child. The Deputy Ombudsman gave the municipal social and health services an official reprimand, stating that the conduct of the authorities had violated the Administrative Procedure Act, Act on the Status and Rights of Social Care Customers and the Disability Services Act. In a case concerning municipal transportation services for disabled persons, the Ombudsman saw that the guidelines of municipalities on transportation services cannot define to which neighbouring municipalities transportation will be provided, as this would violate severely disabled people’s subjective right to transportation services. The personal needs of the individual need to be considered when deciding on the scope of transportation services.

Several cases concerned **the right to receive a decision from the authorities.** In multiple cases authorities had not made a formal decision so that the individual in question could file an official complaint about the decision to an appealing body. The cases included restricting the communications between the complainant and their adult autistic child, the discontinuation of personal assistance, and a school not granting a personal assistant to a disabled pupil.

In addition, the Ombudsman gave official reprimands to Regional State Administrative Agencies for the failure to process promptly and adequately complaints concerning discrimination of disabled persons in recruitment processes. The Ombudsman also saw that social services had violated the Administrative Procedure Act when a decision concerning an underage, severely disabled child was enforced four months after the Administrative Court had given a judgement on the matter. Action was taken only after social services got a request for clarification from the Ombudsman’s Office.

Social insurance cases included cases on the arrangements for interpretation services and decisions on disability benefits. In multiple cases a customer had not been given an interpreter as the National Social Insurance Institution did not consider that it was its duty to provide an interpreter to the customer in the situation in question. The Social Insurance Institution had not made official decisions about the cases. According to the Institution, the decisions were based on earlier decisions on the individual’s right to interpretation services. The Ombudsman and the Deputy Ombudsman saw that a decision should always be made if interpretation services are not provided in individual situations. In addition, seven disabled people’s organisations filed a complaint concerning interpretation services provided by the Social Insurance Institution. The Ombudsman stated that the Institution should always inform its customers about changes in interpretation services and about the rights and responsibilities of individuals and communities.

In the field of education, complaints were made about children’s transportation to school and day care. During one school inspection, it was noted that teachers did not have adequate skills in sign language. This prevented the full integration of children using sign language into the school community.

Other cases concerned, inter alia,keeping physically challenged prisoners in conditions similar to solitary confinement, the failure of authorities to arrange the living conditions of a severely disabled child according to the child’s best interest and the Child Welfare Act, negligence with regard to providing urgent dental treatment for a patient with serious intellectual disability in a care home, as well as lack of toilets and sufficient amount of parking spaces for the disabled and problems with accessibility, including heavy doors and steep ramps, in several public facilities.

On behalf of the Finnish NHRI/Human Rights Centre,

Sirpa Rautio

Director

Hanna Rönty

Associate Expert

1. European Commission (2012). *Discrimination in the EU in 2012; Special Eurobarometer 393*. [↑](#footnote-ref-1)
2. Paula Kankkunen, Päivi Harinen, Elina Nivala and Mari Tapio (2010).*Kuka ei kuulu joukkoon: Lasten ja nuorten kokema syrjintä Suomessa.* Publications of the Ministry of the Interior, 36/2010. [↑](#footnote-ref-2)
3. Milla Aaltonen, Päivi Heino and Susan Villa (2013). “*Riiteleminen on pienelle ihmiselle raskasta.” Selvitys syrjinnän uhrien oikeusturvakeinojen saavutettavuudesta ja vaikuttavuudesta.* Publications of the Ministry of the Interior, 13/2013. [↑](#footnote-ref-3)
4. The Ministry of the Interior (2014). *Syrjintä Suomessa – Tietoraportti.* [↑](#footnote-ref-4)
5. The information on individual cases in this section is based on the annual report for 2014 of the Ombudsman. A summary of the annual report will be published in English later in the year and it will be posted on the Ombudsman’s website,

<http://www.oikeusasiamies.fi/Resource.phx/eoa/english/publications/annual.htx> [↑](#footnote-ref-5)
6. The total number of decisions issued in 2014 was 4757. In addition, the Office of the Ombudsman carried out 111 inspections. [↑](#footnote-ref-6)